

MT LEGISLATIVE HISTORY

Chapter 697 1979

Bill H _____ S 76

Original bill & hist. ☒ C

H. Committee on Agriculture, Livestock & Irrigation S. Committee on Agriculture, Livestock & Irrigation

Select Committee on Water

Hearing Date(s)	_____	C
Jan 19 Mar 12	_____	C
Jan 31 Mar 29	_____	C
Feb 02 Mar 30	_____	C
Feb 09 Apr 02	_____	C
Feb 28 Apr 03	_____	C
Apr 05	_____	C
Date Out	_____	C

Hearing Date(s)	<u>Jan 19</u>	☒ C
	<u>Jan 26</u>	☒ C
	_____	C
	_____	C
	<u>Jan 29</u>	☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

There are no minutes for House Agriculture Committee;
the bill was re-referred to Select Committee on
Water.

CHAPTER. NO. 697

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,
GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,
THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

IN THE SENATE

January 8, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
January 9, 1979	Fiscal note requested.
January 17, 1979	Fiscal note returned.
January 30, 1979	Committee recommend bill do pass as amended. Report adopte
February 1, 1979	Printed and placed on members' desks.
February 2, 1979	Second reading, do pass.
February 3, 1979	Considered correctly engrossed.
February 5, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 6, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
February 7, 1979	Rereferred to Select Committee on Water.
April 6, 1979	Committee recommend bill be concurred in as amended. Report adopted.

April 7, 1979

Second reading, concurred in.

On motion rules suspended
and bill placed on third reading
this day.

Third reading, concurred in as
amended.

IN THE SENATE

April 9, 1979

Returned from second house.
Concurred in as amended.

On motion rules temporarily
suspended to accept House amendments
for consideration on second reading.
Motion adopted.

April 10, 1979

Second reading, amendments rejected.

On motion Free Joint Conference
Committee requested.

Free Joint Conference Committee
appointed.

April 18, 1979

Free Joint Conference Committee
reported.

April 19, 1979

Second reading, adopted.

On motion rules suspended.
Bill placed on Calendar for
third reading this day.

Third reading, adopted.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *76*
 2 INTRODUCED BY *Boyle, Turner, Holt, Jordan*
 3 BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS *Robert*
 4 *Max Brown*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF *Don*
 6 EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101, *Helson*
 7 3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404, 85-2-102, *E. Smith*
 8 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND *J. Brown*
 9 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210,
 10 MCA; AND PROVIDING AN EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Water courts established. (1)
 14 To adjudicate existing water rights, a system of water
 15 courts is established. A water court shall be presided over
 16 by a water judge.

17 (2) There shall be one water judge for each water
 18 court district. A water judge may sit in any district.

19 (3) The governor shall designate one water judge to
 20 serve as chief water judge. The chief water judge may
 21 distribute caseloads among the several water judges on an
 22 equitable basis. The chief water judge shall be assigned to
 23 a district and shall hear cases in that district on an
 24 equitable basis with the other judges. The chief water
 25 judge in consultation with the other water judges shall

1 determine the sites of the offices of the water courts.

2 NEW SECTION. Section 2. Water court districts
 3 defined. (1) There are four water court districts whose
 4 boundaries are formed by the natural divides between
 5 drainages and the borders of the state of Montana and which
 6 are described as follows:

7 (a) The Yellowstone River Basin water court district
 8 consists of those areas drained by the Yellowstone and
 9 Little Missouri Rivers and any remaining areas in Carter
 10 County.

11 (b) The Lower Missouri River Basin water court
 12 district consists of those areas drained by the Missouri
 13 River from below the mouth of the Marias River and any
 14 remaining areas in Glacier and Sheridan Counties.

15 (c) The Upper Missouri River Basin water court
 16 district consists of those areas drained by the Missouri
 17 River to below the mouth of the Marias River.

18 (d) The Clark Fork River Basin water court district
 19 consists of the areas drained by the Clark Fork River, the
 20 Kootenai River and any remaining areas in Lincoln County.

21 (2) Whenever a question arises concerning which water
 22 court has jurisdiction over adjudication of an existing
 23 right, the question shall be settled through consultation
 24 with the water judges involved, subject to review by the
 25 chief water judge.

1 NEW SECTION. Section 3. Salary, expenses, and
2 retirement of water judges. (1) A water judge is entitled to
3 the salary and expenses authorized by law for district
4 judges.

5 (2) A water judge shall participate in the Montana
6 judges' retirement system established in Title 19, chapter
7 5, on the same basis as a district court judge.

8 NEW SECTION. Section 4. Jurisdiction of the water
9 court. (1) A water court has exclusive jurisdiction in
10 matters arising in relation to the determination and
11 interpretation of existing water rights under [this act].
12 It is the intent of the legislature that all such matters be
13 brought in or immediately transferred to a water court
14 unless witnesses have been sworn and testimony has been
15 taken by the district court.

16 (2) The jurisdiction of the water court includes
17 jurisdiction to appoint and supervise water commissioners in
18 the same manner as authorized for district judges.

19 (3) The district court shall assume jurisdiction over
20 enforcement of the provisions of a final decree issued as
21 provided in [section 24 of this act].

22 NEW SECTION. Section 5. Procedure. (1) The water
23 court shall make rules, including rules of evidence,
24 necessary to accomplish the purposes of [this act].

25 (2) Except as may be specifically provided in this

1 section, procedures established in Title 25 applicable to
2 civil procedure in the district court apply to the water
3 court.

4 (3) The use of discovery in cases before the water
5 court may be exercised only to the extent specifically
6 authorized by order of the water court.

7 NEW SECTION. Section 6. Disqualification of water
8 judge. (1) A water judge may disqualify himself in any
9 proceeding in which his impartiality might reasonably be
10 questioned.

11 (2) A water judge may also disqualify himself in the
12 following circumstances:

13 (a) if he has a personal bias or prejudice concerning
14 a party or personal knowledge of disputed evidentiary facts
15 concerning the proceeding;

16 (b) if in private practice he served as a lawyer in
17 the matter in controversy or a lawyer with whom he
18 previously practiced law served during such association as a
19 lawyer concerning the matter or the judge or the lawyer has
20 been a material witness concerning it;

21 (c) if he has served in governmental employment and in
22 such capacity participated as counsel, adviser, or material
23 witness concerning the proceeding or expressed an opinion
24 concerning the merits of the particular case in controversy;

25 (d) if he knows that he, individually or as a

1 fiduciary, or his spouse or minor child residing in his
2 household has a financial interest in the subject matter in
3 controversy or in a party to the proceeding or any other
4 interest that could be substantially affected by the outcome
5 of the proceeding; or

6 (e) if he or his spouse or a person within the third
7 degree of relationship to either of them (as calculated
8 according to 72-11-101 through 72-11-105) or the spouse of
9 such a person:

10 (i) is a party to the proceeding or an officer,
11 director, or trustee of a party;

12 (ii) is known by the judge to have an interest that
13 could be substantially affected by the outcome of the
14 proceeding;

15 (iii) is to the judge's knowledge likely to be a
16 material witness in the proceeding.

17 (3) A water judge should inform himself about his
18 personal and fiduciary financial interests and make a
19 reasonable effort to inform himself about the personal
20 financial interests of his spouse and minor children
21 residing in his household.

22 (4) For the purposes of this section the following
23 definitions apply:

24 (a) "Proceeding" includes prehearing, hearing,
25 appellate review, or other stages of adjudication.

1 (b) "Fiduciary" includes such relationships as
2 executor, administrator, trustee, or guardian.

3 (c) "Financial interest" means ownership of a legal or
4 equitable interest, however small, or a relationship as
5 director, adviser, or other active participant in the
6 affairs of a party, except that:

7 (i) ownership in a mutual or common investment fund
8 that holds securities is not a financial interest in such
9 securities unless the judge participates in the management
10 of the fund;

11 (ii) an office in an educational, religious,
12 charitable, fraternal, or civic organization is not a
13 financial interest in securities held by the organization;

14 (iii) the proprietary interest of a policyholder in a
15 mutual insurance company or a depositor in a mutual savings
16 association or a similar proprietary interest is a financial
17 interest in the organization only if the outcome of the
18 proceeding could substantially affect the value of the
19 interest; and

20 (iv) ownership of government securities is a financial
21 interest in the issuer only if the outcome of the proceeding
22 could substantially affect the value of the securities.

23 (5) A water judge may accept from the parties to the
24 proceeding a waiver of any ground for disqualification if it
25 is preceded by a full disclosure on the record of the basis

1 for disqualification.

2 (6) The procedure for disqualification of a water
3 judge specified in this section is exclusive.

4 NEW SECTION. Section 7. Appeals from water court. The
5 supreme court has exclusive jurisdiction over appeals from a
6 water court. Appeal procedures shall be governed by the
7 Montana Rules of Appellate Civil Procedure.

8 NEW SECTION. Section 8. Qualifications of a water
9 judge. To be eligible to serve as a water judge, a person
10 must have the qualifications of a district court judge
11 required by Article VII, section 9, subsections (1) through
12 (3), of the constitution of Montana. A water judge shall
13 reside within the state.

14 NEW SECTION. Section 9. Creation, composition,
15 function, and termination of water judge nominating
16 commission. (1) A water judge nominating commission is
17 created. Its function is to provide the governor with
18 nominees for appointment as water judges. The commission
19 shall be composed of seven members appointed as follows:

20 (a) two members of the house of representatives
21 appointed by the speaker, not more than one of whom is from
22 the same political party;

23 (b) two members of the senate appointed by the
24 president, not more than one of whom is from the same
25 political party;

1 (c) one member appointed by the governor;

2 (d) one member appointed by the supreme court;

3 (e) one member appointed by the board of directors of
4 the state bar of Montana.

5 (2) Appointments shall be made [within 30 days of the
6 effective date of this section].

7 (3) In the event of a vacancy, the position shall be
8 filled as in the manner of the original appointment.

9 (4) The water judge nominating commission shall meet
10 as often as required to select the nominees. The
11 commission shall nominate three persons for the position of
12 chief water judge and five persons for positions as water
13 judges.

14 (5) The water judge nominating commission shall
15 organize itself and conduct its business under the
16 procedures provided for the nominating commission.

17 (6) Upon the acceptance of appointment by nominees as
18 water judges in each water court district, the water judge
19 nominating commission ceases to exist. Thereafter
20 nomination and appointment of water judges shall be as
21 provided for district court judge.

22 (7) Not later than July 1, 1979, the governor shall
23 appoint a chief water judge and three other water judges
24 from among lists of nominees presented by the water judge
25 nominating commission.

NEW SECTION. Section 10. Appointment of water judges to fill vacancy. (1) If a vacancy occurs, the governor shall appoint a person to complete the unexpired term in the same manner as provided for the appointment of a district judge.

(2) Appointments to subsequent terms shall be made in the same manner as filling a vacancy.

NEW SECTION. Section 11. Water judges -- term of office. The term of office for water judges is from July 1, 1979, to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water court system by the legislature.

NEW SECTION. Section 12. Claim of existing water right -- filing statement of claim required -- exemptions. (1) A person claiming an existing right, unless exempted below, shall file with the water court for the water court district wherein the diversion occurs no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department of natural resources and conservation. If there is a claimed right with no division, the filing shall be made in the district where the use occurs.

(2) Claims for existing rights for livestock and domestic uses based upon instream flow or groundwater sources and claims for rights included in a declaration filed pursuant to the order of a district court issued under

sections 8 and 9 of Chapter 452, Laws of 1973, as amended, are exempt from the filing requirements of subsection (1) of this section. Such claims may, however, be voluntarily filed.

NEW SECTION. Section 13. Department of fish and game to represent public recreational uses. The department of fish and game shall exclusively represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under [sections 12 through 26], provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

NEW SECTION. Section 14. Statement of claim -- contents. (1) The statement of claim for each right shall include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water and times of use claimed;
- (d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

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(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The claimant may submit maps, plats, aerial photographs, decrees, or other evidence in support of his claim.

NEW SECTION. Section 15. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by [section 12] establishes a rebuttable presumption of abandonment of that right.

NEW SECTION. Section 16. Claim to constitute prima facie evidence. A claim of an existing right filed in accordance with [section 12] constitutes prima facie proof of its content until the issuance of a final decree.

NEW SECTION. Section 17. Notice of requirement to file claim. The department shall provide notice of the requirement to file a statement of a claim of an existing water right in substantially the following form:

WATER RIGHTS NOTICE

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT

IN A REBUTTABLE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain rights. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency or the United States of America, asserting a claim to an existing right to the use of water which would be protected under the law as it existed prior to July 1, 1973, is notified that a statement of claim to that right is required to be filed with the water court for the water court district wherein water is diverted or used for the right claimed no later than June 30, 1983. Claims for stock and domestic uses based upon instream flow or groundwater sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in a declaration filed pursuant to the order of a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, as amended, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a

1 copy of the law and an explanation of it.

2 NEW SECTION. Section 18. How notice to be given. To
3 assure that all persons who may claim an existing water
4 right are notified of the requirement to file a claim of
5 that right, the department of natural resources and
6 conservation shall give notice as follows:

7 (1) It shall cause a notice printed in not less than
8 10-point type to be placed in a prominent and conspicuous
9 place in all daily newspapers of the state and in at least
10 one newspaper published in each county of the state during
11 the month of July, 1979, and in April of 1980, 1981, 1982,
12 and 1983.

13 (2) It shall cause a notice in writing to be placed in
14 a prominent and conspicuous location in each county
15 courthouse in the state.

16 (3) It shall provide a sufficient number of copies of
17 the notice to the county treasurers before October 15, 1979,
18 1980, 1981, and 1982, and the county treasurers shall
19 enclose a copy of the notice with each statement of property
20 taxes mailed in 1979, 1980, 1981, and 1982. In the
21 implementation of this subsection, the department shall
22 provide reimbursement to each county treasurer for the
23 reasonable additional costs incurred by the treasurer
24 arising from the inclusion of the notice required by this
25 section.

1 (4) It shall provide copies of the notice in writing
2 to the press services with offices located in Helena during
3 July, 1979, and April of 1980, 1981, 1982, and 1983.

4 (5) The water court may also in its discretion give
5 notice in any other manner that will carry out the purposes
6 of this section.

7 NEW SECTION. Section 19. Filing fee -- special
8 account created. (1) Each claim filed under [section 12]
9 shall be accompanied by a fee in the amount of \$40, subject
10 to the following exceptions:

11 (a) the total fees for all claims filed by one person
12 in any one water court district may not exceed \$480; and

13 (b) no fee is required accompanying a claim of an
14 existing right that is included in a decree of a court in
15 the state of Montana and which is accompanied by a certified
16 copy of that decree or verified as otherwise ordered by the
17 court.

18 (2) There is established a water right adjudication
19 account in the earmarked revenue fund of the state treasury.
20 All fees collected under [sections 19 and 22] shall be
21 deposited in the account to pay the expenses incurred for
22 administering [this act].

23 NEW SECTION. Section 20. Adjudication of existing
24 rights. (1) The state of Montana upon relation of the
25 attorney general shall petition each water court to require

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1 all persons claiming a right within the water court district
2 to file a claim of the right as provided in [section 12].

3 (2) The requirement by the water court to file a claim
4 for an existing right is the first step in proceedings for
5 the general adjudication of all existing rights to the use
6 of water which would be protected under the law as it
7 existed prior to July 1, 1973.

8 (3) The water court shall monitor the claim filing
9 procedure and make any orders necessary to assure timely and
10 accurate compliance with the claim filing procedure.

11 NEW SECTION. Section 21. Department assistance to
12 water court. The department, subject to the direction of the
13 water court, shall, without cost to the water court:

14 (1) provide such information and assistance as may be
15 required by the water court to adjudicate claims of existing
16 rights;

17 (2) establish information and assistance programs to
18 aid claimants in the filing of claims for existing rights
19 required by [section 12];

20 (3) conduct field investigations of randomly selected
21 claims or claims that the water court determines warrant
22 investigation; and

23 (4) provide the water courts with all information in
24 its possession bearing upon existing rights.

25 NEW SECTION. Section 22. Preliminary decree. (1)

1 Within a reasonable time after June 30, 1983, the water
2 court shall issue a preliminary decree. The preliminary
3 decree shall be based on the data submitted by the
4 department and on any additional data obtained by the court.

5 (2) The preliminary decree shall contain the
6 information and make the determinations, findings, and
7 conclusions required for the final decree under [section
8 24].

9 (3) The water court shall send a copy of the
10 preliminary decree to the department, and the court shall
11 serve by mail a notice of availability of the preliminary
12 decree to each person named in the preliminary decree. The
13 clerk or person designated by the court to mail the notice
14 shall make a general certificate of mailing certifying that
15 a copy of the notice has been placed in the United States
16 mail, postage prepaid, addressed to each party in the
17 preliminary decree. Such certificate shall be conclusive
18 evidence of due and legal notice of entry of decree.

19 (4) Any person may obtain a copy of the preliminary
20 decree upon payment of a fee of \$20 to the water court.

21 NEW SECTION. Section 23. Hearing on preliminary
22 decree. (1) Upon objection to the preliminary decree by the
23 department, a person named in the preliminary decree, or any
24 other person, for good cause shown, The department or such
25 person is entitled to a hearing thereon before the water

1 court.

2 (2) If a hearing is requested, such request must be
3 filed with the water court within 90 days after notice of
4 entry of the preliminary decree. The water court shall, for
5 good cause shown, extend this time limit an additional 30
6 days if application for the extension is made within 90 days
7 after notice of entry of the preliminary decree.

8 (3) The request for a hearing shall contain a precise
9 statement of the findings and conclusions in the preliminary
10 decree with which the department or person requesting the
11 hearing disagrees. The request shall specify the paragraphs
12 and pages containing the findings and conclusions to which
13 objection is made. The request shall state the specific
14 grounds and evidence on which the objections are based.

15 (4) Upon expiration of the time for filing objections
16 and upon receipt of a request for a hearing, the court shall
17 notify each party named in the preliminary decree that a
18 hearing has been requested. The court shall fix a day when
19 all parties who wish to participate in future proceedings
20 must appear or file a statement. The court shall then set a
21 date for a hearing. The court may conduct individual or
22 consolidated hearings. A hearing shall be conducted as for
23 other civil actions.

24 NEW SECTION. Section 24. Final decree. (1) The water
25 court shall, on the basis of the preliminary decree and on

1 the basis of any hearing that may have been held, enter a
2 final decree affirming or modifying the preliminary decree.
3 If no request for a hearing is filed within the time
4 allowed, the preliminary decree automatically becomes final,
5 and the court shall enter it as the final decree.

6 (2) The final decree shall establish the existing
7 rights and priorities within the water court district of
8 persons required by [section 12] to file a claim for an
9 existing right and of persons who filed declarations
10 pursuant to an order of a district court issued under
11 sections 8 and 9 of Chapter 452, Laws of 1973.

12 (3) The final decree shall state the findings of fact,
13 along with any conclusions of law, upon which the existing
14 rights and priorities of each person named in the decree are
15 based.

16 (4) For each person who is found to have an existing
17 right, the final decree shall state:

18 (a) the name and post-office address of the owner of
19 the right;

20 (b) the amount of water, rate, and volume, included in
21 the right;

22 (c) the date of priority of the right;

23 (d) the purpose for which the water included in the
24 right is used;

25 (e) the place of use and a description of the land, if

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1 any, to which the right is appurtenant;
 2 (f) the source of the water included in the right;
 3 (g) the place and means of diversion;
 4 (h) the inclusive dates during which the water is used
 5 each year;
 6 (i) any other information necessary to fully define
 7 the nature and extent of the right.
 8 NEW SECTION. Section 25. Appeals from final decree.
 9 (1) A person whose existing rights and priorities are
 10 determined in the final decree may appeal the determination
 11 only if:
 12 (a) he requested a hearing and appeared and entered
 13 objections to the preliminary decree; or
 14 (b) his rights as determined in the preliminary decree
 15 were altered as the result of a hearing requested by another
 16 person.
 17 (2) An appeal from the final decree shall be taken as
 18 provided by the Montana Rules of Appellate Civil Procedure.
 19 NEW SECTION. Section 26. Certificate of water right.
 20 When a final decree is entered, the court shall send a copy
 21 to the department. The department shall on the basis of the
 22 final decree issue a certificate of water right to each
 23 person decreed an existing right. The original of the
 24 certificate shall be sent to the county clerk and recorder
 25 of the county where the point of diversion or place of use

1 is located for recordation. The department shall keep a
 2 copy of the certificate in its office in Helena. After
 3 recordation, the clerk and recorder shall send the
 4 certificate to the person to whom the right is decreed.
 5 Section 27. Section 3-1-101, MCA, is amended to read:
 6 "3-1-101. The several courts of this state. The
 7 following are courts of justice of this state:
 8 (1) the court of impeachment, which is the senate;
 9 (2) the supreme court;
 10 (3) the district courts;
 11 ~~(4) the water courts;~~
 12 ~~††(5) the justices' courts;~~
 13 ~~††(6) the city courts and such other inferior courts~~
 14 ~~as the legislature may establish in any incorporated city or~~
 15 ~~town."~~
 16 Section 28. Section 3-1-102, MCA, is amended to read:
 17 "3-1-102. Courts of record. The court of impeachment,
 18 the supreme court, the district courts, ~~the water courts,~~
 19 and the municipal courts are courts of record."
 20 Section 29. Section 3-1-1001, MCA, is amended to read:
 21 "3-1-1001. Creation, composition, and function of
 22 commission. A judicial nomination commission for the state
 23 of Montana is created. Its function is to provide the
 24 governor with a list of candidates for nomination to fill
 25 any vacancy on the supreme court, ~~or any district court, or~~

1 a water court of the state of Montana. The commission shall
2 be composed of seven members as follows:

3 (1) four lay members who are neither judges nor
4 attorneys, active or retired, who reside in different
5 geographical areas of the state, and each of whom is
6 representative of a different industry, business, or
7 profession, whether actively so engaged or retired, who
8 shall be appointed by the governor;

9 (2) two attorneys actively engaged in the practice of
10 law, one from each congressional district, who shall be
11 appointed by the supreme court;

12 (3) one district judge elected by the district judges
13 under an elective procedure initiated and conducted by the
14 supreme court and certified to such election by the chief
15 justice of the supreme court. The election shall be
16 considered an appointment for the purposes of this part."

17 Section 30. Section 3-1-1010, MCA, is amended to read:

18 "3-1-1010. List submitted to governor. The commission
19 shall meet forthwith after a vacancy occurs on the supreme
20 court, or a district court, or a water court and submit to
21 the governor within 30 days from the date of the vacancy a
22 list of not less than three or more than five persons."

23 Section 31. Section 19-5-301, MCA, is amended to read:

24 "19-5-301. Membership. (1) A judge or justice who was
25 a member of the PERS prior to March 2, 1967, may elect to

1 remain under that system by notifying the public employees'
2 retirement board in writing of the election on or before
3 October 1, 1967.

4 (2) Every other judge of a district court, water
5 court, or justice of the supreme court must be a member of
6 the Montana judges' retirement system."

7 Section 32. Section 19-5-404, MCA, is amended to read:

8 "19-5-404. Contributions by the state. The state of
9 Montana shall contribute monthly to the fund a sum equal to
10 6% of the salary of each member. In addition, the clerk of
11 each district court shall transmit 60% of the fees collected
12 under 25-1-201 to the state, which shall first deposit in
13 the fund an amount equal to 20% of the salaries paid to
14 district judges, water judges, and supreme court justices
15 who are covered by the judges' retirement system and then
16 deposit the balance in the state general fund. The clerk of
17 the supreme court shall pay one-fourth of the fees collected
18 under 3-2-403 to the public employees' retirement division
19 of the department of administration to be credited to the
20 fund."

21 Section 33. Section 85-2-102, MCA, is amended to read:

22 "85-2-102. Definitions. Unless the context requires
23 otherwise, in this chapter the following definitions apply:

24 (1) "Appropriate" means to divert, impound, or
25 withdraw (including by stock for stock water) a quantity of

1 water or, in the case of a public agency, to reserve water
2 in accordance with 85-2-316.

3 (2) "Beneficial use" means a use of water for the
4 benefit of the appropriator, other persons, or the public,
5 including but not limited to agricultural (including stock
6 water), domestic, fish and wildlife, industrial, irrigation,
7 mining, municipal, power, and recreational uses. A use of
8 water for slurry to export coal from Montana is not a
9 beneficial use. Slurry is a mixture of water and insoluble
10 matter.

11 (3) "Board" means the board of natural resources and
12 conservation provided for in 2-15-3302.

13 (4) "Certificate" means the a certificate of water
14 right issued by the department under ~~85-2-210~~ ~~subsections~~
15 ~~{1}-end-{2}-of-85-2-306, end-85-2-315.~~

16 (5) "Declaration" means the declaration of an existing
17 right filed with the department under 85-2-203 section 8,
18 Chapter 452, Laws of 1973.

19 (6) "Department" means the department of natural
20 resources and conservation provided for in Title 2, chapter
21 15; part 33.

22 (7) "Existing right" means a right to the use of water
23 which would be protected under the law as it existed prior
24 to July 1, 1973.

25 (8) "Groundwater" means any water beneath the land

1 surface or beneath the bed of a stream, lake, reservoir, or
2 other body of surface water, and which is not a part of that
3 surface water.

4 (9) "Permit" means the permit to appropriate issued by
5 the department under 85-2-301 through 85-2-303 and 85-2-304
6 through 85-2-314.

7 (10) "Person" means an individual, association,
8 partnership, corporation, state agency, political
9 subdivision, the United States or any agency thereof, or any
10 other entity.

11 (11) "Political subdivision" means any county,
12 incorporated city or town, public corporation, or district
13 created pursuant to state law or other public body of the
14 state empowered to appropriate water but not a private
15 corporation, association, or group.

16 (12) "Waste" means the unreasonable loss of water
17 through the design or negligent operation of an
18 appropriation or water distribution facility or the
19 application of water to anything but a beneficial use.

20 (13) "Water" means all water of the state, surface and
21 subsurface, regardless of its character or manner of
22 occurrence, including geothermal water and diffuse surface
23 water.

24 (14) "Well" means any artificial opening or excavation
25 in the ground, however made, by which groundwater is sought

1 or can be obtained or through which it flows under natural
2 pressures or is artificially withdrawn."

3 Section 34. Section 85-2-112, MCA, is amended to read:
4 "85-2-112. Department duties. The department shall:

5 (1) enforce and administer this chapter and rules
6 adopted by the board under 85-2-113;

7 (2) prescribe procedures, forms, and requirements for
8 applications, permits, certificates, declarations, and
9 proceedings under this chapter and prescribe the information
10 to be contained in any application, declaration, or other
11 document to be filed with the department under this chapter;

12 (3) establish and keep in its Helena office a
13 centralized record system of all existing rights and a
14 public record of permits, certificates, declarations, claims
15 of existing rights, applications, and other documents filed
16 in its office under this chapter;

17 (4) cooperate with, assist, advise, and coordinate
18 plans and activities with the federal, state, and local
19 agencies in matters relating to this chapter;

20 (5) upon request by any person, cooperate with,
21 assist, and advise that person in matters pertaining to
22 measuring water or filing declarations with the department
23 or claims of existing rights with a water court under this
24 chapter."

25 Section 35. Section 85-2-113, MCA, is amended to read:

1 "85-2-113. Board powers and duties. (1) The board may
2 prescribe fees or service charges for any public service
3 rendered by the department under this chapter, including
4 fees for the filing of applications or for the issuance of
5 permits and certificates. There shall be no fees for the
6 filing of declarations or for any action taken by the
7 department at the request of a water court or for the
8 issuance of certificates of existing rights.

9 (2) The board may adopt rules necessary to implement
10 and carry out the purposes and provisions of this chapter.
11 These rules may include but are not limited to rules to:

12 (a) govern the issuance and terms of interim permits
13 authorizing an applicant for a regular permit under this
14 chapter to begin appropriating water immediately, pending
15 final approval or denial by the department of the
16 application for a regular permit;

17 (b) require the owner or operator of appropriation
18 facilities to install and maintain suitable controlling and
19 measuring devices;

20 (c) require the owner or operator of appropriation
21 facilities to report to the department the readings of
22 measuring devices at reasonable intervals and to file
23 reports on appropriations; and

24 (d) regulate the construction, use, and sealing of
25 wells to prevent the waste, contamination, or pollution of

SB 76

14

1 groundwater.

2 (3) The board shall adopt rules providing for and
3 governing temporary emergency appropriations, without prior
4 application for a permit, necessary to protect lives or
5 property."

6 Section 36. Section 85-2-114, MCA, is amended to read:

7 "85-2-114. Prevention of waste. (1) If the department
8 ascertains, by a means reasonably considered sufficient by
9 it, that a person is wasting water, using water unlawfully,
10 or preventing water from moving to another person having a
11 prior right to use the same, it may petition the district
12 court supervising the distribution of water among
13 appropriators from the source to:

14 (a) regulate the controlling works of an appropriation
15 as may be necessary to prevent the wasting or unlawful use
16 of water or to secure water to a person having a prior right
17 to its use; or

18 (b) order the person wasting, unlawfully using, or
19 interfering with another's rightful use of the water to
20 cease and desist from doing so and to take such steps as may
21 be necessary to remedy the waste, unlawful use, or
22 interference.

23 (2) The department may attach to the controlling works
24 a written notice, properly dated and signed, setting forth
25 the fact that the controlling works have been properly

1 regulated by it, which notice shall be legal notice to all
2 persons interested in the appropriation or distribution of
3 the water.

4 (3) The department may also direct its own attorney or
5 request the attorney general or county attorney to bring
6 suit to enjoin such waste, unlawful use, or interference."

7 Section 37. Section 85-2-401, MCA, is amended to read:

8 "85-2-401. Priority. (1) As between appropriators, the
9 first in time is the first in right. Priority of
10 appropriation does not include the right to prevent changes
11 by later appropriators in the condition of water occurrence,
12 such as the increase or decrease of streamflow or the
13 lowering of a water table, artesian pressure, or water
14 level, if the prior appropriator can reasonably exercise his
15 water right under the changed conditions.

16 (2) Priority of appropriation made under this chapter
17 dates from the filing of an application for a permit with
18 the department, except as otherwise provided in 85-2-301
19 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

20 (3) Priority of appropriation perfected before July 1,
21 1973, shall be determined as provided in ~~85-2-201 through~~
22 ~~85-2-210 part 2 of this chapter.~~"

23 Section 38. Section 85-2-405, MCA, is amended to read:

24 "85-2-405. Procedure for declaring appropriation
25 rights abandoned. (1) When the department has reason to

believe that an appropriator may have abandoned his appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court ~~which determined the existing rights in the source for the county wherein the diversion of place of use~~ of the appropriation in question is located to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena."

Section 39. Section 85-2-406, MCA, is amended to read:

"85-2-406. ~~District court--supervision~~ Supervisor of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This

supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right. A district court shall relinquish supervision of water distribution when a water court assumes responsibility for such supervision.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to 85-2-201 through 85-2-210 part 2 of this chapter, any party to the controversy may petition the district water court for relief. ~~The department shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the source, in accordance with part 2 of this chapter. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceedings.~~ The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the department's decision ~~whether to determine existing rights in the source or the department's decision to intervene as a party, as the case may be, if the department does not proceed to obtain a~~

~~determination of existing rights; the district court shall settle only the controversy between the parties issuance of the final decree.~~

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under ~~85-2-201 through 85-2-210~~ part 2 of this chapter shall be settled by the district court ~~which issued the final decree for a county in which a diversion or place of use germane to the controversy is located.~~ The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding."

Section 40. Codification. (1) Sections 1 through 9 and section 11 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 12 through 26 are intended to be codified as an integral part of Title 85, chapter 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(3) If the provisions of this act are not codified as stated above, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section.

Section 41. Repealer. Sections 85-2-201 through 85-2-210, MCA, are repealed.

Section 42. Effective date. Sections 8, 9, and 10 of this act are effective upon passage and approval.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received Jan. 9, 19 79, there is hereby submitted a Fiscal Note
for SB 76 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members
of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

An act to adjudicate claims of existing water rights in Montana.

ASSUMPTIONS

1. 275,000 claims will be filed over a four year period at the rate of \$40 per claim as follows:

1st year - 8,250	3rd year - 55,000
2nd year - 27,500	4th year - 184,250

2. The current adjudication program in the Powder River Basin will continue.
3. Ten percent of the claims will be checked. The Department of Natural Resources and Conservation (DNRC) will keypunch data and microfilm claims.
4. Personal services costs will increase 6% each year.
5. The program in DNRC established to assist with adjudication will employ FTE employees as follows:

FY1980 - 29 FTE	FY1983 - 103 FTE
FY1981 - 38 FTE	FY1984 - 103 FTE
FY1982 - 50 FTE	

6. The Water Court will employ FTE employees as follows:

FY80 - 24 FTE	FY83 - 32 FTE
FY81 - 28 FTE	FY84 - 32 FTE
FY82 - 32 FTE	

7. Costs of DNRC in excess of revenues collected under the proposed legislation will be paid from the State General Fund.
8. Minimal costs will be incurred in FY1979 by the Water Judge Nominating Commission.
9. No water judge will vacate his/her position in the 1981 Biennium; therefore, the Judicial Nominations Commission will not be required to meet to nominate persons to replace a water judge.
10. The Department of Fish and Game will necessarily expand fisheries field and other operations to:
- document, determine, and make filing on waters traditionally used by the seven operating state fish hatcheries,
 - file claims for water for instream purposes on 12 streams previously filed for in 1970 and 1971,
 - undertake extensive studies to document and support the amount of instream water necessary to maintain the aquatic resources at the current level for the above-mentioned twelve streams,
 - file claims on other waters where water rights were previously acquired or filed for instream purposes.
11. The Department of Fish and Game will generate revenues from federal and private sources to fund this expanded requirement.
12. The Department of State Lands will be required to inventory records, contact lessees, etc. to gather the necessary data to file claims. One additional FTE position and related operating expenses will be required. The additional cost to the Department of State Lands will be funded from the State General Fund.

Richard L. Drayton

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4/17/79

FISCAL IMPACT

	<u>FY80</u>	<u>FY81</u>
Revenue from proposed filing fees	<u>\$ 330,000</u>	<u>\$1,100,000</u>
Expenditures		
Department of Natural Resources		
Personal services	429,740	598,773
Operating expenses	191,800	203,100
Equipment	112,000	29,000
	<u>733,540</u>	<u>830,873</u>
Water Court		
Personal services	464,088	543,079
Operating expenses	37,200	38,700
Equipment	15,000	5,000
	<u>516,288</u>	<u>586,779</u>
Department of Fish and Game		
Personal services	145,800	161,400
Operating expenses	60,750	67,250
Equipment	36,450	40,350
	<u>243,000</u>	<u>269,000</u>
Department of State Lands		
Personal services	13,019	13,800
Operating expenses	7,745	6,775
	<u>20,764</u>	<u>20,575</u>
Total expenditures under proposed law	<u>1,513,592</u>	<u>1,707,227</u>
Excess of expenditures over revenues under proposed law	<u>1,183,592</u>	<u>607,227</u>
Less: Expenditures under current law		
Department of Natural Resources	190,800	202,200
Department of Fish and Game	40,000	44,000
Total expenditures under current law	<u>230,800</u>	<u>246,200</u>
Net additional cost of proposed legislation in 1981 Biennium	<u>\$ 952,792</u>	<u>\$ 361,027</u>
The net cost will be absorbed from monies from the following:		
State General Fund	\$ 749,792	\$ 136,027
Federal and Private Revenue Fund	203,000	225,000
	<u>\$ 952,792</u>	<u>\$ 361,027</u>

LONG TERM IMPACT

Following reflects in millions of dollars estimated receipts and expenditures under the proposed legislation for the fiscal years ending June 30, 1985:

	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>TOTAL</u>
Revenue from filing fees	<u>\$0.33</u>	<u>\$1.10</u>	<u>\$2.20</u>	<u>\$7.37</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$11.00</u>
Expenditures							
Natural Resources	0.73	0.83	1.08	2.01	2.06	2.11	8.82
Water Court	0.52	0.59	0.68	0.71	0.75	0.80	4.05
Fish and Game	0.24	0.27	0.27	0.06	0	0	0.84
State Lands	0.02	0.02	0.01	0	0	0	0.05
	<u>1.51</u>	<u>1.71</u>	<u>2.04</u>	<u>2.78</u>	<u>2.81</u>	<u>2.91</u>	<u>13.76</u>
Expenditures under current law							
Natural Resources	0.19	0.20	0	0	0	0	0.39
Fish and Game	0.04	0.05	0.05	0	0	0	0.14
	<u>0.23</u>	<u>0.25</u>	<u>0.05</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.53</u>
Total additional expenditures under proposed legislation	<u>1.28</u>	<u>1.46</u>	<u>1.99</u>	<u>2.78</u>	<u>2.81</u>	<u>2.91</u>	<u>13.23</u>
Net revenue (expenditure)	<u>\$(0.95)</u>	<u>\$(0.36)</u>	<u>\$0.21</u>	<u>\$4.59</u>	<u>\$(2.81)</u>	<u>\$(2.91)</u>	<u>\$(2.23)</u>

Funding for the six year net cost of the proposed legislation will be provided as follows:

General Fund	\$1.53 million
Federal and Private Revenue Fund	<u>0.70 million</u>
	<u>\$2.23 million</u>

LOCAL IMPACT

Local governments with applicable existing water rights would incur costs in research and filing claims. Also county clerk and recorder workloads will increase due to additional filing requirements, mailing costs, etc. Specific dollar amounts were not determined.

TECHNICAL NOTE

The Department of Natural Resources states that the proposed legislation contains various minor defects, and that the items of concern will be discussed at committee hearings.

COMMITTEE ON AGRICULTURE

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB 5	1/4	1/8	1/8	1/8					
SB 40	1/8	1/15	1/15	1/15					
SB 68	1/6	1/12	1/12			1/12			
SB 76	1/8	1/19, 26, 29	1/29			1/29			
SB 95	1/13	1/19	1/19		1/19				
SB 96	1/13	1/19	1/19			1/19			
SB 279	1/29	2/5, 14	2/16 TABLED						
SB 314	1/31	transferred							
SB 365	2/10	2/16, 19	2/19		2/19				
SB 396	2/7	2/14	2/14	2/14					
SB 407	2/7	2/12	2/12			2/12			
SB 410	2/7	2/12	2/12	2/12					
SB 436	2/10	2/14	2/14	2/14					
SB 442	2/10	2/14	2/14			2/14			
SB 465	2/12	2/16	2/16			2/16			
SB 499	2/13	2/16	2/16 TABLED						

(Use Separate Sheet for Senate, House Bills, and Resolutions)

Agriculture COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 590	PROVIDING FOR AN INCREASE IN LICENSING OR REGISTRATION FEES FOR PERSONS WAREHOUSING BEANS, FOR APIARIES, AND FOR NURSERYMEN.	2-6-79	Manuel	2-14-79	Do Pass As Amended	2-14-79
HB 615	PROHIBIT CONSTRUCTION OF BUILDINGS WITHIN 25' OF DITCHES OR CANALS USED FOR IRRIGATION, OTHER LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, OR FOR CARRYING WASTE WATER, & PROVIDING FOR THE PAYMENT OF COSTS & ATTORNEY'S FEES IN ACTIONS TO ENFORCE THIS ACT.	2-6-79	Seifertsen		Rereferred	2-8-79
✓ SB 76	TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA.	2-6-79	Boylan		Rereferred	2-8-79
HB 677	TO INCREASE THE BOARD OF LIVE-STOCK MEMBERSHIP FROM SEVEN TO NINE BY ADDING A REPRESENTATIVE OF THE MONTANA MARKETS INDUSTRY AND A REPRESENTATIVE OF THE INDEPENDENT VETERINARIANS OF THE STATE.	2-9-79	Ellerd	2-16-79	Do Not Pass	2-16-79
HB 700	TO REQUIRE CORPORATIONS ENGAGED IN AGRICULTURAL PRODUCTION IN MONTANA TO DISCLOSE IN THEIR ANNUAL REPORTS THE EXTENT OF SUCH PRODUCTION; AND PROVIDING FOR COMPILATION OF THE INFORMATION.	2-9-79	Johnson	2-16-79	Do Not Pass	2-16-79
HB 735	TO GENERALLY REVISE LAWS RELATING TO BUTCHERS AND MEAT PEDDLERS AND INSPECTION OF HIDES FROM SLAUGHTERED ANIMALS	2-12-79	Staigmilller	2-16-79	Do Pass	2-16-79

SELECT WATER COMMITTEE

46th Legislature.

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 230	TO PROVIDE THAT THE SLURRY TRANSPORT OF COAL IS NOT A BENEFICIAL USE OF WATER.	1-17-79	Kemmis	2-16-79	Do Pass	2-16-79
SB 40	TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO WATER USE.	1-22-79	Boylan	3-9-79	Be Concurred In	3-9-79
I Hw	SETTING A MINIMUM AND MAXIMUM \$5 TO \$25, AND DISTRICT MAY CHARGE SEPARATELY OWNED D FOR AN ANNUAL	2-8-79	Bengtson	2-16-79	Do Pass	2-16-79
I	CONSTRUCTION OF BUILDINGS OF 5' OF DITCHES OR OR IRRIGATION, DOMESTIC OR COMMERSE, OR FOR CARRYER AND PROVIDING FOR THE PAYMENT OF COSTS AND ATTORNEYS' FEES IN ACTIONS TO ENFORCE THIS ACT.	2-8-79	Sivertsen	2-16-79	Do Pass	2-17-79
✓ SB 76	TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA.	2-8-79	Boylan	Joint Hearing 1-19-79	Subcommittee 3-29-79 Substitute Bill Concurred In	4-5-79
2 HB 717	DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DISPOSE OF THE DAILY DITCH WATER PROJECT; TO CANCEL AND WRITE OFF ACCOUNTS RECEIVABLE ON THE DAILY DITCH WATER	2-12-79	Bardanove	2-16-79	Do Pass	2-17-79

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

January 19, 1979

A joint hearing of the Senate Agriculture Committee and the House Select Committee on Water was called to order by Chairman Galt in the House Chambers at 7:30 p.m. on the above date. The purpose of the meeting was a public hearing on Senate Bill 76. Chairman Galt and Chairman Day explained how the testimony would be handled.

Senator Boylan was the chief sponsor of the bill. He was the first signer of the bill but he said it was actually drafted from the interim committee on water. This committee consisted of Representatives Scully, Ramirez, Day and Roth. The Senators were Galt, Turnage, Boylan and ex-senator Bergren.

Representative Scully said this bill was introduced at the request of the interim committee. He felt this was one of the major problems in Montana - how to preserve our water. The bill was drafted with the help of the Department of Natural Resources. Also there were seven hearings held throughout the state in order to get public input. He then went through the bill and generally explained some of the provisions in it. He said 275,000 claims would be filed in the next four years at the rate of 40 dollars per claim. The fiscal note is attached. (see yellow copy) He said the committee realized that the bill had some parts that could be improved to make it more successful, but he felt the process had to be started some place.

Proponents:

Zack Stevens, representing the Farm Bureau, Farmers Union, NFO, Grange, WIFE, Agricultural Preservation Association, Montana Dairyman's Association, Montana Graingrowers Association testified in support of the bill. He said these organizations represent 80,000 Montanan's. His testimony is attached exhibit #1.

Representative Vicki Johnson, district #72 spoke in behalf of the Stillwater County Water Users Board. Their testimony is attached #2.

Gordon McGowan, a rancher from Highwood Montana and a lobbyist for the Montana Railroad Association rose in support of the bill. His testimony is attached per exhibit #3. He had been a Senator for 20 years and perhaps introduced more legislation in the field of water than anyone in the state's history. He introduced the bills that are now the current water law.

Senator Steve Brown, district #15, was one of the 14 co-sponsors of the bill. There is nothing more important in the state than the adjudication process to preserve the water for Montana and protect it from downstream users. He felt the disqualifications for water judges was a problem and should be made clearer. He felt the Montana Supreme Court should be allowed to create special rules for the water courts. The process had to be fully funded in order for it to succeed. He felt the retirement fund for judges should come from the filing fees rather than them being a member of the Montana judges' retirement system. He also felt the \$40 filing fee should be for every claim.

Mons Teigen, Montana Stockgrowers and Montana Woolgrowers said these two organizations were in support of Senate Bill 76. He stated that in the past we have had enough water but the time has come to get our water quantified because downstream users are looking at it.

Next to speak was Representative Burnett, district #71. He was representing not only himself, but the Red Lodge Creek Water Users, Cooney Dam Water Users, Rock Creek Water Users, Clarks Fork Water Users and the Wearst Ditch Co. In general they agreed with the bill. His testimony is attached #4. He submitted letters from the people he was representing for the record.

Willa Hall, representing the League of Women Voters testified next. She said it was vital that the adjudication process be completed as soon as possible. Her testimony is attached, see exhibit # 5.

Pete Jackson, representing WETA and himself as a rancher was strongly in support of the bill and commended the committee on the work they had done.

Pat Smith, Northern Plains Resource Council said they also had appreciated the committees work during the interim. They felt the bill would strengthen Montana's claim to water. He felt the filing fee discriminated against the small man because of the \$40 per claim and the limitation of \$480.

Kenneth Clark, representing the Railroad Brotherhood, arose in support of the bill.

John North from the Department of State Lands, said they recognize that is of the utmost importance to declare and adjudicate the water rights in the State. His testimony is attached # 6.

2

Knute Hereim, representing himself, said he didn't feel the water judges in each district would be able to handle all of the filings. Their caseload would be too heavy. He also felt the filing deadline of four years should be shortened to approximately 1 1/2 years. He did feel the bill was needed.

Ron Waterman, attorney, and representing the Burlington Northern said that this was the second session that the bill has been before the Legislature. The two years had been well spend to bring about a good bill. The lack of adjudication prevent the state of Montana from protecting its water resources from raids from other states. He brought up an incident on the Big Horn River in Wyoming. This bill places it in a single court to adjudicate the claims and have a final decree instead of going to both the state and federal courts.

This concluded the proponents. The next group to testify were the non-committed people.

Judge Brownlee, judge of the district court, fourth judicial district from Missoula, said he was mainly in support of the bill but did have some suggestions to it. His testimony is attached. Exhibit # 7.

Ted Doney, Department of Natural Resources, said that two years ago he had reported to the legislature that the adjudication process was not working and it has not gotten any better. The present system is not working because it takes the staff too long to go out on the sites. The primary goal has to be that we try to achieve documentation of our water. We want to protect ourselves from downstream states. He said the bill was actually in two phases. They agreed with the first phase - filing, but they questioned the mandatory court adjudication process. All that is required in most cases is some type of legal documentation. He didn't think that water rights could ever be adjudicated statewide through the courts. No state has ever completed an adjudication process through that system. He felt the court process was too costly, especially to the claimant. They recommended that the claim system outlined in the bill be adopted without the court adjudication system, but with an optional court adjudication system when needed. Attached is a report from the DNR of the interim study they had composed. See exhibit # 8. Sen. Galt felt they should have been registered as an opponent to the bill.

W. G. Gilbert, Jr., attorney from Dillon, representing himself spoke next. He has tried many water suit in Beaverhead County. He said there were a few provisions in the bill that should be made clearer. After the Governor appointed the chief water judge it should be made clearer that the remaining appointees should include those that were selected for appointment of chief water judge not only those among the list of nominees presented by the water judge nominating committee.

This concluded the non-committed testimony. Next the opponents were heard from.

OPPONENTS:

Carl Davis, attorney, representing the Clark Canyon West Co, which represents 190 water users and 50,000 acres of land spoke next. He said we don't have to act in haste as we appear to be doing in this bill. He agreed with the two phases that the DNR had brought out. He didn't feel that the rights that had already been decreed should have to go through the process of filing again. If you give the district court judge the power that is in this bill then he should have the power to decide what areas should be handled first. He felt the bill gave the judges too much power. There is nothing in the bill to disqualify a judge. The judge can only disqualify himself. The 30 days to get the appointments made after the bill is enacted is not long enough in his opinion. He also felt the filing date should be staggered or everyone would wait until the last few weeks to file their claim.

Mr. Roy, representing the Montana Inter-Tribal Policy Board rose in opposition. He felt they have full legal rational why the reservations should be amended out of the bill and unless they are it would mean litagation against the State. He said the Indian water rights should not be confused with the federal reserved rights. He felt this bill would be advertising that Montana has a surplus of water. His testimony is attached per exhibit #9.

Mike Watson, also from the Montana Inter-Tribal Policy Board rose in opposition. He also mentioned that Indian water rights are different than federal reserve rights. He did not feel that this bill would accomplish preserving the water for the state.

Caleb Shield, Fort Peck Tribes, said he had attended a meeting for the National Congress of American Indians and they had adopted a resolution. He submitted the resolution to the committee which is attached. # 10.

Rubie Sooktis, Northern Cheyenne Tribe, read the testimony that is attached, exhibit #11.

Frank Perez, Fort Belknap arose in support of the bill and presented written testiony to the committee. See exhibit #12.

Representative Scully then closed. He said the interim committee knew it would not be an easy task. He felt we had to give the bill the opportunity to work and by putting it off we would never know if the process would work, and if we don't try something the federal raid on Montana water will come through. The bill has the mechanics to make the adjudication process work. The bill would assist anyone in the transfer of water.

Discussion was then held by the committee.

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Also attached to the minutes are two letters in support of the bill. One letter is from Mr. Joe Renders, a member of the Judicial Nominating Commission, see exhibit #13, and the other letter is from Vernon Westlake, Agricultural Preservation Association from Gallatin County. See exhibit #14.

Senator Galt said this would conclude the hearing, but that on January 26, the Senate Agriculture Committee would have a meeting on the bill for presentation of amendments. He felt the bill had had a good public hearing and thanked everyone for their participation.



SENATOR JACK E. GALT, Chairman

MY NAME IS ZACK STEVENS ... WITH THE MONTANA FARM BUREAU. THIS EVENING I AM SPEAKING ON BEHALF OF OVER 30 THOUSAND MONTANANS REPRESENTED BY THE FARM BUREAU, MONTANA FARMER'S UNION, MONTANA'S NATIONAL FARM ORGANIZATION, THE GRANGE OF MONTANA, WIFE OF MONTANA, THE MONTANA GRAIN GROWERS ASSOCIATION, ~~AND~~ MONTANA DAIRYMEN'S ASSOCIATION, *The Agricultural Preservation Association*. THE AGRICULTURAL COMMUNITY OF MONTANA SUPPORTS SENATE BILL 76 AND ITS CONCEPT OF A SPEEDY ADJUDICATION OF MONTANA WATER RIGHTS. WE ALSO WANT TO TAKE THIS OPPORTUNITY TO THANK AND PRAISE MEMBERS OF THE INTERIM SUBCOMMITTEE ON WATER RIGHTS FOR THE GREAT AMOUNT OF WORK THEY DID TO FASHION THIS BILL AFTER A SERIES OF MEETINGS THROUGHOUT MONTANA ... AT WHICH THEY ACCEPTED TESTIMONY AND RECOMMENDATIONS OF THE PUBLIC. WE ALSO HELD A SERIES OF PUBLIC MEETINGS ACROSS MONTANA ... SEVERAL OF THEM WITH REPRESENTATIVES OF THE DEPARTMENT OF NATURAL RESOURCES AND VARIOUS LEGISLATORS SERVING ON THE INTERIM COMMITTEE ADDRESSING THE PUBLIC MEETINGS.

STATEMENTS ELICITED BY THE PUBLIC AT ALL THESE MEETINGS HAD A COMMON THREAD ... THEY WANTED A SYSTEM OF ADJUDICATION THAT WAS SPEEDY TO PROTECT MONTANA WATER FROM DOWNSTREAM INTERESTS AND STATES ... AND THEY WANTED A GENERAL ADJUDICATION PROCESS WHICH WOULD PROVIDE FOR EXPEDITIOUS QUANTIFICATION OF FEDERALLY RESERVED WATER CLAIMS.

ANOTHER POINT AGREED UPON BY VIRTUALLY EVERYONE IN ATTENDANCE AT THESE MEETINGS IS THAT THEY WANT THE ADJUDICATION PROCESS TO BE HANDLED WITH THE JUDICIAL ~~PROCESS~~ ^{SYSTEM} AS PRESCRIBED BY THE BILL. VIRTUALLY NONE OF THOSE IN ATTENDANCE AT THESE PUBLIC MEETINGS WANTED THE PROCESS TO BE HANDLED ADMINISTRATIVELY ~~AS RECOMMENDED~~ BY THE DEPARTMENT OF NATURAL RESOURCES. IT SEEMS APPARENT THAT THE AGRICULTURAL COMMUNITY OF MONTANA WOULD FEEL MUCH MORE SECURE WITH THE JUDICIAL PROCESS THAN THEY WOULD IF THE BUREAUCRATS WERE TO HANDLE AN ADMINISTRATIVE SYSTEM.

AGAIN, I REITERATE ... MONTANA FARMERS AND RANCHERS SUPPORT S.B. 76.

TESTIMONY SUBMITTED TO THE JOINT HEARING OF THE SENATE AND HOUSE COMMITTEES ON
AGRICULTURE FROM THE STILLWATER COUNTY WATER USERS BOARD REGARDING SB 76, AN
ACT TO ADJUDICATE CLAIMS TO EXISTING WATER RIGHTS IN MONTANA

The Stillwater County Water Users Board wish to support the provisions of Senate Bill 76 as an effective way of adjudicating streams in Montana. This legislation provides for water courts with judges serving situations specific to agricultural water. The intent relies heavily on response of water users submitting claims to water rights held prior to 1973 as they proceed in fact finding to prove beneficial use and expedite the process of adjudications. There are important points we wish to express.

1. The water court system provides opportunity for undivided attention to formalizing agricultural claims to water. This system provides experience for judges and an approach that would not be hampered by other interests or problems.
2. The chief water judge designated by the governor according to findings of the nominating commission would be vital to operations. The volumes of claims on Montana would require efficiency, accountability and a high level of administrative skill.
3. The Stillwater County Water Users Board suggest amending Section 1, page 2, by adding, "the courts would be held at the county seat within the county where the stream is to be adjudicated."
4. The districts described in Section 2 are agreeable as they are specific to drainages which does provide for continuity within the adjudication process.
5. Section 3 establishes conditions equal to a district judge which may provide encouragement for judges to participate or become interested.

6. The selection of judges in Section 9 is vital to obtaining qualified judges. The nominating commission serves as a screening committee to insure that consideration be given to qualities each of the five nominating judges. Understanding of water law and some idea of the history of agricultural water in Montana would be crucial. The chief water judge named from the three nominations of the nominating commission would be chosen fairly and according to criteria established by the commission. The dates suggested by SB 76 insure rapid action by the nominating commission which is an advantage in offering time for judges to become acquainted with problems in the district and establish ground rules for operation.
7. Section 12, page 9, provides a method of filing a statement of claim by June 30, 1983. Claims submitted on a standard form provided by the Department of Natural Resources insure continuity and completeness. Decreed rights, use rights, filed rights, would be included without exception to eliminate possibly loss of oversight. Exemption of domestic, stock watering and the permits after 1973 would not effect the existing water rights established for beneficial use. Earlier filed claims sometimes do not contain clear descriptions of ditch location, and serve as an integral part in providing date of establishment, but not necessarily location.
8. Section 14, page 10, offers details of each claim submitted. The Stillwater Water Users Board had developed a similar system that allows water users to gather data about water rights in an organized way. This provides proof of use and aids establishment of time and quantity needs.
9. Section 15--The assumption of abandonment is rebuttable in the event one fails to file a claim. This is acceptable as it is conceivable some important claims may be overlooked.
10. Section 18, page 13, provides that notices be given all persons who claim an existing water right. The Department of Natural Resources can insure continuity of notice across Montana throughout the notification process during the four year period. The county handling of notice could cause confusion and may lead to over-

looking someone. This would also add heavily to work load responsibility, however, not appreciably if they only assist with including notices with tax statements.

11. Section 19, page 14, establishes a filing fee of \$40 not to exceed \$480, with no fee for decreed rights. This would help defray expenses and does not seem exhorbitant if water users were assured of some action being taken to protect water for agricultural porposes.

12. Section 21, page 15, offers guidance for the Department of Natural Resources. The Department has expertise in water right adjudication and it is logical that they would provide the best possible hlep for courts and claimants. Considerable information has been gathered by DNRC and this would also be useful.

13. The preliminary decree (Sec. 22 & 23) and the final decree (Sec. 24) provide opportunity for review and hearings if desired. Should a user not be satisfied they can show cause and proceed through the provisions of the hearing. The final decree establishes the water rights in detail and offers official documentation of water rights so Montana water can be accountable.

The information gathered by claimants, the process of adjudication, and the final certificate and registration of water rights will insure the use of water for agricultural porposes in the future. The courts are legally recognized and serve a useful role in establishing proof of use of Montana water which is vital to the Montana economy.

The Stillwater County Water Users Board wish to thank the Senate and House committees on agriculture for offering the opportunity to support SB 76. This board is elected by water users in seven communities in Stillwater County and is concerned about water rights and the future of Montana water.

Respectfully submitted,
Chester Peterson, President
Stillwater County Water Users BO

41-3

MR. CHAIRMAN: MEMBERS OF THE HOUSE AND SENATE JOINT SELECT WATER COMMITTEE. MY NAME IS GORDON MCGOWAN, A RANCHER FROM HIGHWOOD, MONTANA. I AM A REGISTERED LOBBYIST IN THIS FORTY-SIXTH LEGISLATIVE SESSION FOR THE MONTANA RAILROAD ASSOCIATION. MY INTEREST IN MONTANA GOES BEYOND THE ASSOCIATION, HOWEVER. I HAVE SERVED IN THE MONTANA SENATE FOR TWENTY YEARS AND PERHAPS INTRODUCED MORE LEGISLATION IN THE AREA OF WATER THAN ANY OTHER PERSON IN OUR STATE HISTORY. I HAVE ONLY ONE DESIRE--TO MOVE OUR STATE INTO THE TWENTIETH CENTURY IN THIS FIELD. FOR THIS REASON, I AM A CONCERNED CITIZEN. I BECAME CONCERNED LONG BEFORE THE VAST MAJORITY OF OUR PEOPLE WERE GIVING THIS AREA A PASSING THOUGHT. I HAVE NEVER LOST MY CONCERN! A LOT OF WATER HAS GONE UNDER THE BRIDGE!!! EACH DAY THAT PASSES AND THE LONGER DECISIONS ARE DELAYED, THE MORE WE STAND TO LOSE. HOW MUCH LONGER DOES ANY REASONABLE THINKING PERSON BELIEVE THIS CAN GO ON? SHORT SIGHTEDNESS, SELFISHNESS, FAILURE TO UNDERSTAND THE PROGRAMS OF OTHER STATES AND MOST IMPORTANT OF ALL, THE POLITICAL CLOUD OF THE NUMBERS IN CONGRESS FROM CALIFORNIA, TEXAS, ARIZONA, COLORADO, NEW MEXICO AND THE CONFINES OF THE MISSISSIPPI RIVER BELOW WHERE THE MISSOURI RIVER FLOWS IN.

THE HOUR IS LATE LADIES AND GENTLEMEN. THE DECISION LIES IN THESE LEGISLATIVE HALLS!

I WISH TO THANK THIS COMMITTEE FOR ALLOWING ME TO APPEAR HERE. I WISH TO COMPLEMENT YOU ON YOUR WORK, WITH THE FIRM BELIEF THAT YOU HAVE A VEHICLE FROM WHICH TO MOVE

THIS STATE OF MONTANA FORWARD. I AM IN FULL SUPPORT OF YOUR BILL.

I KNOW MANY GOOD PEOPLE WILL OFFER CHANGES AND AMENDMENTS. SOME WILL BE GOOD AND SOME WILL NOT WORK. SOME MAY EVEN BE OFFERED TO MUDDY THE WATERS, BUT IN YOUR HANDS REMAIN THE RESPONSIBILITY TO ACCEPT OR REJECT.

I HAVE ONE SUGGESTION TO MAKE IF THE COURT PLEASES, AND YOU ARE THE COURT. MY SUGGESTION WOULD BE THAT IN THIS BILL, WHEREVER IT FITS, TO STATE THAT THE CHIEF JUDGE BE REQUESTED TO SEND A REPORT OF THEIR RESULTS TO BOTH HOUSE AND SENATE COMMITTEES THAT ARE HANDLING WATER LEGISLATION, REPORTING PROGRESS WHEN EACH NEW LEGISLATURE MEETS. IN THIS MANNER, YOU WILL BE ABLE TO CORRECT ANY SHORT-COMINGS AND HAVE FIRST-HAND INPUT IF YOU NEED TO AMEND YOUR ACT TO HELP THE JUDGES SPEED UP THEIR PROGRAM.

IF MY MEMORY SERVES ME CORRECTLY, I SPENT EIGHTEEN YEARS GETTING MONTANA TO PASS THE WATER CODE THAT IS NOW ON OUR BOOKS. HAD IT NOT BEEN FOR THIS CONTINUOUS EFFORT WE WOULD HAVE SLIPPED ANOTHER TWENTY-FIVE YEARS BEHIND.

I WILL CLOSE WITH THE FOLLOWING QUOTE OF JOHN F. KENNEDY'S:

IN NO OTHER OCCUPATION BUT POLITICS IS IT EXPECTED THAT A MAN WILL SACRIFICE HONORS, PRESTIGE AND HIS CHOSEN CAREER ON A SINGLE ISSUE. LAWYERS, BUSINESSMEN, DOCTORS, ALL FACE DIFFICULT PERSONAL DECISIONS INVOLVING THEIR INTEGRITY--BUT FEW, IF ANY, FACE THEM IN THE GLARE OF THE SPOTLIGHT AS DO THOSE IN PUBLIC OFFICE. FEW, IF ANY, FACE THE SAME DREAD FINALITY OF DECISION THAT CONFRONTS A LEGISLATOR FACING AN

IMPORTANT CALL OF THE ROLL. HE MAY WANT MORE TIME FOR HIS
DECISION--HE MAY BELIEVE THERE IS SOMETHING TO BE SAID FOR
BOTH SIDES--HE MAY FEEL THAT A SLIGHT AMENDMENT COULD REMOVE
ALL DIFFICULTIES--BUT WHEN THAT ROLL IS CALLED HE CANNOT
HIDE, HE CANNOT EQUIVOCATE, HE CANNOT DELAY--AND HE SENSES
THAT HIS CONSTITUENCY, LIKE THE RAVEN IN POE'S POEM, IS
PERCHED THERE ON HIS LEGISLATIVE DESK, CROAKING "NEVERMORE"
AS HE CASTS THE VOTE^{may} THAT STAKES HIS POLITICAL FUTURE.

January 19, 1979

For the record I'm Jim Burnett, Representative from District 71 Carbon County.

I represent not only myself as a water user but also about 2000 water users in Carbon County.

The Red Lodge Creek water usersRalph Heare, President
Cooney Dam water usersPat Billingsley, President
Rock Creek water users *Tippecanoe Fork*Dick Nutting, President
Clarks Fork water usersLeo Bratsky, President
Wearst Ditch Co. Inc. water usersWilliam Niemi, Secretary

In general we agree with the concept of SB76 in that the use of water in Montana needs to be identified.

We also feel we do not want a new bureaucracy, but to act within an existing agency.

We fully support the first stages of this bill in the collection of information and allowing the water user to submit documentation.

We would like to have this legislation direct the district courts to open the already adjudicated streams for water users that are experiencing problems. This could be determined by petitions by water users. For the most part and with economics in mind we could save many millions of dollars by requiring the registration of use rights and allowing water users of that stream to petition the courts should an adjudication be desired.

We suggest:

(1) That the administration of the act will be held as close to the problem as possible, preferably at the county level.

(2) We feel that the method of selecting District Judges, if this is the course that is to be taken, that members of the legislature are most responsive of members in a nominating committee and perhaps that the area of the nominating committee to be

strengthened or to allow a Judge to be elected at large in each of the suggested water districts.

(3) The law is rather ambiguous in the area of how previously adjudicated streams will be handled. Numerous problems have come up in this area over the past years and could be reviewed and corrected at this time.

(4) The permit system has not worked well and should be abandoned. The filing should be at the local level and a copy sent to a central filing system in Helena.

(5) Hearings should be as close to the problem as possible, in most cases the county courthouses in the county in which the stream flows.

(6) Consideration should be given if this bill is enacted to selecting the most competent person experienced in water that are available.

Amendments will be offered to the committee before their Senate and House Committee deliberations.

January 19, 1979

TO: Rep. James Burnett
William Day
Sen. Paul Boylan
Max Conover
Jack Galt

Gentlemen:

We would like to express support for the concept of SB 76, however, we feel it should be amended to allow the first part in the process of collecting information and have an oversight committee give guidance for the next two years with the 47th assembly authorizing the activation of the water judge court process of that time if it becomes feasible.

Sincerely,

William A. Niemi, Secretary
Wearst Ditch Co., Inc.
Luther, Montana 59051

January 18, 1979

Representative James Burnett
Representative William Day
Senator Paul Boylan
Senator Max Conover
Senator Jack Galt

Gentlemen:

We would like to express our support for Senate Bill No. 76 which will facilitate the adjudication of all water in the State of Montana.

Our group represents about 180 holders of water purchase contracts in Cooney Reservoir. We have 40 years experience working with both decreed water and with stored water.

At a meeting held in Red Lodge to discuss Senate Bill No. 76 with the Decreed Users Association, the following suggestions were approved by the Board of Directors:

1. Insure that the administration of the act will be held as close to the problem as possible, preferably at the county level. We feel it would be more effective and make better relations with the public.
2. We feel that the method of selecting judges does not insure that judges will be appointed who are well versed in water law. The members of the legislature are the most responsive members of the nominating committee and, perhaps, that area of the nominating committee to be strengthened.
3. The law is rather ambiguous in the area of how previously decreed streams will be handled. Numerous problems have come up in this area over the past years and could be reviewed and corrected at this time.
4. The permit system has not worked well and should be abandoned. The filing should be at the local level with a copy sent to a central filing system in Helena.

January 18, 1979

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5. All hearings should be as close to the problem as possible. In most cases, county courthouses in the county in which the stream flows should be utilized. The water judge and his staff can travel with much less trouble than asking all of the water users to travel many miles.
6. Consideration should be given to retaining the most competent water judges in the system as traveling judges to hold court on water matters only. This is a specialized field and we find that the average district court judge is not well versed in the field.

Sincerely,

Leo C. Bratsky
President
Clarks Fork Water
Users Association

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January 18, 1979

Page 2

5. All hearings should be as close to the problem as possible. In most cases, county courthouses in the county in which the stream flows should be utilized. The water judge and his staff can travel with much less trouble than asking all of the water users to travel many miles.
6. Consideration should be given to retaining the most competent water judges in the system as traveling judges to hold court on water matters only. This is a specialized field and we find that the average district court judge is not well versed in the field.

Sincerely,

Pat Billingsley
President
Rocky Fork Decreed
Users, Incorporated

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January 18, 1979

Page 2

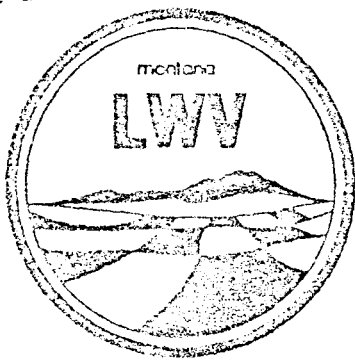
5. All hearings should be as close to the problem as possible. In most cases, county courthouses in the county in which the stream flows should be utilized. The water judge and his staff can travel with much less trouble than asking all of the water users to travel many miles.
6. Consideration should be given to retaining the most competent water judges in the system as traveling judges to hold court on water matters only. This is a specialized field and we find that the average district court judge is not well versed in the field.

Sincerely,

Onnie Hyvonen
President
Rock Creek Water
Users Association

lb

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LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony in support of Senate bill 76

January 19, 1979

I am Willa Hall, representing the League of Women Voters of Montana. I have followed the Interim Committee this past year, attending nearly all their meetings and I would like to commend this committee for their thorough study of the water issues relating to the adjudication process.

It is vital that the adjudication of Montana waters be completed as rapidly and efficiently as possible. Therefore, the League of Women Voters endorses Senate bill 76. We realize special water courts and judges will add to the immediate cost of the process, but after listening to all the information presented to the interim committee, we feel this bill presents the most expedient method of adjudication.

Appropriating sufficient funds to expedite adjudication is extremely important. We urge a do pass for Senate Bill 76.

1/6
January 19, 1979

S.B. 76
TESTIMONY - DEPARTMENT OF STATE LANDS

Recognizing that it is of the utmost importance to declare and adjudicate the water rights for all water used within the State of Montana, the Department of State Lands generally supports S.B. 76 as proposed.

However, the Department of State Lands requests that the language of this legislation be expanded to address and clarify the following points:

1. Page 9, Lines 22-25 and Page 10, Lines 1-4.

As outlined in this Section, claims for existing rights for livestock and domestic uses based upon instream flow or groundwater sources are exempt. The declaration of existing rights for livestock and domestic uses from stored surface water in reservoirs has not been specifically addressed. The Department has many reservoirs which collect and store runoff surface water for livestock purposes. If these were also exempt, the Department's declarations would be considerably reduced. In fact, if surface water storage were exempt, the additional full-time employee would be needed for fewer than the 2½ years indicated.

2. Page 9, Section 12.

Domestic use of water by municipalities should be addressed. Municipal water rights for domestic use could prove to be a significant right on individual water sources. These should probably not be exempt.

3. Page 10, Lines 3 and 4.

The processing of the claims that are voluntarily filed have not been addressed. Will they be included in the preliminary decree or will they be filed by the Department for future reference and adjudication? This should be made clear so that the advantages and disadvantages of voluntary filing are known.

It is estimated that the Department of State Lands would have approximately 500 existing water rights to declare. To declare this number of existing rights within the time frame specified in this act, one additional full-time employee would be employed. The annual budget for this program would be:

460

TESTIMONY - DEPARTMENT OF STATE LANDS

S.B. 76

Page Two

	FY 79-80	FY 80-81	FY 81-82
1 FTE - Grade 10	12 months	12 months	6 months
Salary	\$10,774	\$11,026	\$5,638
Benefits	1,508	1,544	789
Per Diem	3,500	3,500	1,750
Travel	2,545	2,545	1,273
Supplies & Postage	1,500	50	
Telephone	<u>200</u>	<u>200</u>	<u></u>
	\$20,027	\$18,865	\$9,450

TOTAL: \$48,342

Thank you for the opportunity to present our comments.

COMMITTEE MEETING ON WATER LAW PROBLEMS

Friday, January 19, 1979 - 7:30 P.M.

* * * * *

I am E. Gardner Brownlee, Judge of the District Court,
Fourth Judicial District, Missoula, Montana.

My presentation here tonight will be to make a few
suggestions toward the implementation of the provisions of
the 1972 Montana Constitution regarding water use.

I have a few suggestions regarding the procedure to be
followed in getting the right to the use of water documented
by proper Court Decrees and a few suggested changes in our
present laws.

* * * * *

1 FIRST, I feel it is important to tell you about my experience.

2 One of my first cases upon graduation from Law School
3 in 1940 involved water rights. From then on much of my
4 legal practice concerned water and ditch rights. During
5 the 14 years I was County Attorney I spent many hours in
6 the courtroom assisting the District Judge handle the
7 problems between Water Commissioners and objecting landowners.

8 I was appointed District Judge in 1959 and during the
9 years since that appointment the other judges in the Fourth
10 Judicial District seem to have been most happy to permit
11 me to handle most of the administrative work in connection
12 with decreed streams.

13 To assist the Clerks of Court and the Water Commissioners
14 I have prepared written instructions covering the administering
15 of water on decreed streams by the Water Commissioners,
16 (some of you may know them as ditch riders). These instruc-
17 tions also cover the subject of how private water from
18 reservoirs should be handled when that water is put into a
19 natural source.

20

21 SECOND, I would like to talk about one of the decreed streams
22 in Ravalli County and what has been done on that stream in
23 the past few years.

24 The stream is the Burnt Fork and it probably has the
25 oldest water right in the State of Montana: The Fort Owen Right.

1 The stream was decreed in 1905 and since that time there
2 have been many changes in the area. Senator Severson and
3 Representative Thoft each are water right owners on the
4 Burnt Fork. Many years ago the Sunset Irrigation District
5 built a storage reservoir in the upper reaches of the Burnt
6 Fork to store flood water for irrigation use later in the
7 year. Representative Thoft is an officer of that irrigation
8 district. I am sure those two gentlemen will tell you that
9 a few years ago things were not too peaceful in that area
10 and arguments between water users were very common.

11 About six years ago some of the water users met with me
12 and discussed possible ways to improve the situation. The
13 result was the formation of a "Burnt Fork Water Commission"
14 consisting of five members, one from each of the major
15 distribution areas. That Commission worked hard and improved
16 the situation greatly but finally it got to the point where
17 the physical changes in the area plus the changes in water
18 diversion that had been done without any approval from the
19 Court was causing serious conflict.

20 About this same time I was having some problems with
21 the D.N.R. and what I felt were some improper actions they
22 were taking in decreed watersheds. I studied the 1973
23 Water Use Law and saw many parts of that law would be of
24 great benefit to a judge who was required to supervise the
25 distribution of water on decreed streams. But the part of

1 that new law that most impressed me was the fact that the
2 Courts seemed to be given the power to review the old water
3 decrees and more or less bring them up to date. I felt
4 that if we could do that on the Burnt Fork we could solve
5 many problems and bring peace to the area.

6 I particularly liked the provision for a Preliminary
7 Decree and then after a hearing the making of a Final Decree.
8 The 1973 law provided that the D.N.R. should do that work
9 but I saw no reason to believe that they alone had that
10 right. The fact that the Final Decree would be put on the
11 D.N.R. computer was a great idea. In handling water we
12 have always found it difficult to keep track of changes in
13 ownership -- Now all we would have to do is ask for a
14 computer print out. The general law requires that any
15 ownership transfer recorded with the Clerk and Recorder
16 be sent to the D.N.R. and be put on the computer.

17 I felt the machinery was there, now how to get the work
18 done. I asked the Supreme Court for a summer intern and
19 advised that Court that I was going to have the law student
20 assist me in bringing the Burnt Fork Decree up to date by
21 following the 1973 Water Use Law. I contacted Senator
22 Severson and discussed the problem with him. I told him
23 I felt we would need a map of the area and he volunteered
24 to make one. I must say that he did a remarkable job and
25 the map is probably one of the best parts of the entire program.

1 I then had the Clerk of Court send a questionnaire to all
2 persons known to us who claimed any interest in Burnt Fork
3 water. We got a good percentage of them back but a large
4 percentage of them did not have real good information.

5 I interviewed law students for the summer intern job
6 and found one who was a graduate civil engineer and who had
7 spent two summers working on irrigation projects designing
8 distribution structures. He also had experience dealing
9 with courthouse ownership records. I hired him for the
10 summer position.

11 During the summer of 1977 we had three different Water
12 Commissioners on Burnt Fork and each was involved in much
13 turmoil. One quit after looking down the business end of
14 a 12-gauge shotgun. While I was looking for the summer
15 intern I talked with one young man who was very interested
16 in water law and who impressed me as being a person who
17 could really work with people. He was interested in being
18 the Water Commissioner for 1978 and so he got that job.
19 This gave me not one but two law students to help on the
20 summer project.

21 These two young men personally examined every parcel
22 of land that had Burnt Fork water rights. They examined
23 all diversion structures and talked to almost every water
24 user. They had been instructed to record all statements
25 and complaints about the use of water. We got together

1 and examined all of this information and determined what
2 the proper water rights were. The young men then went back
3 into the area and discussed these findings with the landowners.
4 All water users were advised of their rights to have a hearing
5 on any disputed matters. I am very pleased to inform you
6 that we had only two matters presented to the Court for
7 formal disposition and one was settled to the satisfaction
8 of all concerned while the other was settled. But I feel
9 one of the water users still feels my ruling should have
10 been a little different.

11 That matter has now been completed by a Final Decree
12 and I am convinced that what we did is a blue print for
13 the future. I believe we have pioneered the route the
14 Legislature should take in completing the task at hand.

15 This new Decree also contains a general description of
16 the watershed. This information with the map will make it
17 easy for judges, water commissioners and landowners to
18 understand the entire area situation and this will surely
19 help any judge determine future problems.

20 Prior to 1973 it was almost impossible to reopen a
21 Decree on any adjudicated stream to establish new rights or
22 even consider such things as changes in diversion or use.
23 The 1973 Water Use Act provides a new and easy yet very
24 proper way to handle any new appropriations of water or
25 make a record of any changes. Existing priority rights

1 need not be questioned but new rights can be established
2 subsequent in time to the prior decreed rights. We did
3 just that in a few instances on the Burnt Fork. More new
4 rights can be added later without the difficulties we would
5 have faced prior to 1973.

6
7 THIRD, If the results on Burnt Fork are what we want
8 statewide then it seems to me we must:

9 1. Provide one District Judge with statewide
10 jurisdiction to supervise the work necessary to prepare
11 a Preliminary Decree for the various watersheds. Call
12 him the Chief Water Judge if you wish. I feel his
13 function would be administrative but also he would be
14 serving as a pre-trial judge getting all matters disposed
15 of that do not require trial and then selecting those
16 issues that need trial by the District Judge in that
17 area.

18 2. If necessary pro tempore judges could be
19 employed to handle trial work.

20 3. The Chief Water Judge must have the necessary
21 authority to require the D.N.R. to either do or not do
22 certain acts. I will set out some reasons later.

23 4. The Chief Water Judge should have all the
24 necessary Rule making power to carry out the purpose
25 and intent of the 1972 Constitution and the 1973 Water

1 Use Law. The Supreme Court would have supervisory
2 jurisdiction over these rules of court. Those rules
3 should be designed to get the job done. As I see it,
4 we have three areas of concern:

5 (a) we need to update existing decrees.

6 (b) we need to establish other existing
7 rights as of 1973 and make them part of a
8 decree.

9 (c) we need to adopt a method of working
10 appropriations subsequent to 1973 into the
11 decrees.

12 5. The amount and quality of the work will depend
13 on the budget for the project. I would recommend that
14 a budget be adopted for a two-year project and then
15 the 1981 Legislature can review and evaluate the
16 project to determine if it should be continued or some
17 other project adopted.

18 6. The budget should be administered by the
19 Supreme Court Administrator, but the Chief Water Judge
20 should have full power to employ qualified persons,
21 select office locations and fully administer the program.
22 All expenditures except the salary and necessary travel
23 and per diem expenses of the District Judge designated
24 as the Chief Water Judge should be the responsibility
25 of the State of Montana and paid from the above-mentioned
budget.

1 7. I feel it is only fair that I offer to assist
2 with this work. I feel it is a challenge I would enjoy
3 and I believe I could handle the job. We can discuss
4 that later if you wish.

5 8. I believe the new legislation should carefully
6 consider the filing fees. , None for existing decreed
7 rights and none of the fee to the D.N.R. has been paid
8 and none for papers filed by the Water Judge in the
9 various District Courts.

10
11 I mentioned earlier that I had problems with the D.N.R.
12 I feel those problems are such that the selection of a
13 water judge is necessary. The D.N.R. should not be both
14 an investigative agency and an agency determining the law.
15 Interpretation of the law should be the sole responsibility
16 of the District Court. Here are the examples of problems
17 I have observed.

18 1. They are granting rights on decreed streams
19 without any attempt to set priorities and without
20 advising the person that the right is a very late right.

21 2. They are granting rights to use decreed water
22 in an improper manner, i.e. put it in storage when the
23 law says that if the water is not needed for beneficial
24 purposes at the time it should be released to the
25 next right in point of time.

1 3. They are allowing pumping rights from decreed
2 streams or from the sources of water for decreed streams.
3 Here again the priority rights are not designated.

4 4. I feel that the provisions of Subsection (2)
5 of 89-888 are not being followed in spirit because the
6 rights the D.N.R. are issuing are interpreted as final
7 rights by the persons with the certificates. This
8 illustrates one of the problems, the forms they use
9 need to be improved and I believe approved by the Courts.

10
11 I believe the 1973 Water Use Law was good in that it
12 contemplated a procedure where the gathering of information
13 was to be done in a manner other than as is done in a normal
14 court trial. That concept was good and I believe it failed
15 because the D.N.R. has so many other obligations and also
16 because of lack of coordination with the Courts. I believe
17 any proceedings leading to a Court Decree must be under
18 control of the Courts.

19 I believe one of the strong points of what I have
20 suggested here is that one judge will be in charge of all
21 of the procedure in getting the matter into court. That
22 judge will determine preliminary issues and sort out the
23 problems for another judge to solve. I feel the Court will
24 be in control from the beginning but the landowners and water
25 right claimants will have the right to have another judge

1 make a final determination in certain instances.

2

3 If you feel this program has merit, I would like to
4 discuss specific legislation. Actually, I don't believe
5 many changes in our present 1973 Water Use Law are
6 necessary.

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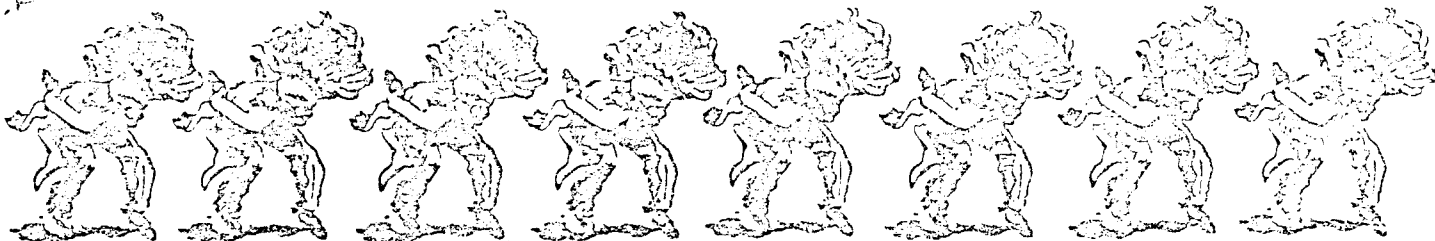
Report
to
Montana Legislature Interim
Subcommittee on Water Rights
Representative John P. Scully, Chairman

by
Laurence J. Siroky
Chief, Water Rights Bureau
Department of Natural Resources and Conservation

Approved by
Ted J. Doney, Director

April 14, 1978

5



Montana Inter-Tribal Policy Board

300 North 25th St., Suite 103 • Billings, MT 59101 • (406) 245-2228

MEMBERS OF THE SENATE COMMITTEE

We, members of the Montana Inter-Tribal Policy Board, representing the seven Indian Reservations in Montana respectfully submit an amendment to Senate Bill 76. The amended language we suggest would be included in New Section 4 beginning immediately after line 11. The language reads:

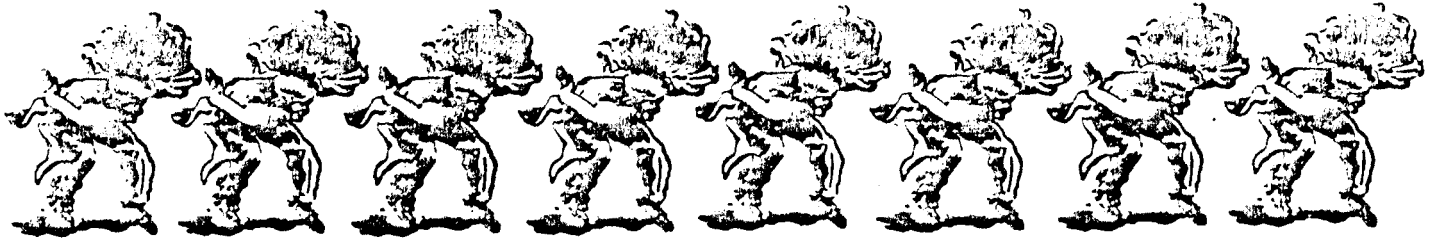
With the exclusion, nevertheless, of the Indian right to the use of water which is a separate private property right of Tribes and Indian people, and therefore specifically excepted from all provisions of this act. This act shall not apply to any water rights owned by any Indian or Indian Tribe or reserved for the benefit of any Indian or Indian Tribe.

LEGAL RATIONALE FOR AMENDATORY LANGUAGE.

Indian reserved water rights are not to be confused with or encompassed with federal reserved rights, such as parks, national forests, federal enclaves, to use of water, and have a priority date which is time immemorial and is superior to any other rights to that water.

The water rights set aside for the Indians are different from the other reserved water rights for federal enclaves, in that the Indian water is held in trust for the Indians. The nature and extent of the water rights which vested in the Indians at the time the reservation was created would appear to be a judicial question. A statute endeavoring to define and limit these rights would be only a legislative guess on a judicial issue.

In addition to this, we submit that state and federal governments by their actions and legislation have recognized this legal proposition of prior



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CHAIRMAN
Tom Pado
Flathead

and paramount right to the use of water through the following:

1ST VICE CHAIRMAN
Bill Yellowtail
Crow

1. State Disclaimer Clause which is contained in the State Enabling Act: (This merely disclaims any jurisdiction of the state over Indian Lands.)

2ND VICE CHAIRMAN
Ivan Raining Bird
Rocky Boy

2. Federal Laws - Executive Orders and Treaties which support the Indian claims of paramount right to use of water.

SECRETARY-TREASURER
Don Bishop
Little Shell

3. State Organic Act: (This provides that the State will forever in no way interfere with trust responsibility of the United States to the Indian Tribes.)

MEMBER TRIBES

Blackfeet
Crow
Flathead
Belknap
Peck
Little Shell
Northern Cheyenne
Rocky Boy

Proposed act as written would impinge directly on the federal-Indian trust relationship. In addition, the proposed act is counter-productive to the establishment amicable and friendly relationships between state and tribal government in an effort to avoid protracted litigation.

Executive Director
Thomas C. Whitford
Blackfeet

Passage of this act will necessitate litigation to determine if Indian rights, as distinguished from federal rights, can be adjudicated in state courts.

Evidence of this developing dialogue is the meeting of tribal officials with the State Committee on Legal Jurisdiction. This Committee, established by the 45th Legislature, in conjunction with tribal leadership laid the groundwork for possible resolution of many issues including water rights. It is hoped further progress can be made, and discussion set to keep the communication lines open and to solve problems short of litigation.



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Don Bishop
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During this session you will consider SJR 1, a resolution which will further the opportunity for honest dialogue between state and tribal leadership. Such controversial issues as jurisdiction, law and order and water rights will be addressed. I think it should be emphasized here, the above and other issues will be discussed openly in a group setting and not in a legal setting.

MEMBER TRIBES

Blackfeet
Crow
Flathead
'elknap
'eck
Little Shell
Northern Cheyenne
Rocky Boy

Evidence of attempted amicable solutions where Indian reserved water rights are:

- West Wide Water Study
- Missouri River Basin Commission
- Pacific Northwest River Basin
- Clarkfork Study Commission
- Western Governors' Association
- Western Attorney General
- Council of State Legislation
- Council of State Governments
- President's Water Policy

Executive Director
Thomas C. Whitford
Blackfeet

Passage of the proposed act will seriously jeopardize all of these efforts at amicable solutions.



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Rocky Boy

Executive Director
Thomas C. Whitford
Blackfeet

By passage of this Act the State of Montana would be playing directly into the hands of the President's National Water Policy which by identification and quantification facilitates an overall plan to transfer Montana water from traditional agricultural uses to industrial uses. This would occur within the boundaries of Montana. Also, passage would encourage inter-basin transfers to water short areas and states outside the State of Montana.

The general public and small Montana irrigators will be limited for expansion by the ceilings imposed on water rights when the rich and powerful industrial and agricultural corporations acquire and develop the surplus waters of Montana. Montana by the proposed legislation will be placing a ceiling on its own water rights and down stream users will be calling for the excess. The State at present has only existing uses. Our known uses are small in comparison with available supply. Studies and the President's Water Policy downplay our irrigable acreage in Montana, both on and off the Indian Reservations. Again, by this Bill, Montana would be advertising that there is surplus water in Montana which is available for sale and inter-basin transfer.

Environmental degradation will occur by diminution of stream flows and destruction of fishery and other aquatic habitat.

Under the proposed Act, an irrigator who filed and perfected a water right in 1920 and has used that right for these 59 years will now be required to refile before 1983 or be deemed to have abandoned this valuable right. He will have to represent himself in costly litigation to preserve a right which he now



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owns outright. In effect, the doctrine of res adjudicata is lost under the new proposed law.

Montana is sparsely populated. The President's Water Policy is geared to assist industrial development through water marketing and inter-basin transfer by limiting the amount of development that can take place by small water users in the Western States.

This proposed legislation facilitates that National Water Policy. In this regard the proposed legislation will announce loudly the availability of surplus water in Montana and preclude future development by small water users in the State.

Jim Posewitz of the State Fish and Game Department has already reserved under State law adequate water to protect environmental quality and stream flow, all of which would be subject to litigation under the scheme proposed under the new act. In effect, the State Fish and Game Department's reservation would be valueless.

The Western Governors' Association, of which Montana is a participant, recognizes the complicated issues which now face the Indian Tribes and State Government in many areas. A recent statement from the Association suggests alternatives to the costly litigation process. One of the most pronounced alternative is to develop a dialogue with Tribes and to assist Tribes to develop internally so as to become economically viable communities. Water resources is the key to this development.

The proposed bill is in direct opposition to their spirit of the Governors' Association and numerous other organizations and study groups striving for the same results.

Indian Tribes fight the daily battle of protection and preservation of water resources. Federal agencies such as the Interior Department and the Department of Justice are allowing their conflicting roles of interest to perilously threaten the secure position which the State and the Tribe now enjoy. But again, Montana is sparsely populated and we are being looked to with covetous eyes for exploitation of our bountiful water resources.

The proposed bill would insure the goal of down stream users to the detriment of the State of Montana.

The "Act to Adjudicate Claims of Existing Water Rights in Montana . . ." will facilitate the acquisition of water by industrial users expedite interbasin transfers to water short areas of the southwest and assist in the confirmation of the claims by downstream states, specifically Nebraska, Iowa, Kansas and Missouri for navigation purposes. As a headwater state, Montana currently enjoys plentiful water supplies for present and future users including instream flows for preservation of environmental quality. By redefining existing water rights and establishing an upper limit on existing rights the surplus waters, thereby identified, become subject to appropriation by industrial users downstream navigation states and proponents of interbasin transfer, all to the detriment of Montana.

(10)

NATIONAL CONGRESS OF AMERICAN INDIANS

35TH ANNUAL CONVENTION

September 20, 1978

Rapid City, South Dakota

RESOLUTION NO. 52

WHEREAS, the Native Americans have been subjected, over the years to a constant barrage of efforts on the part of non-Indians to take their lands, water, minerals and other valuable resources. Never before, however, have those efforts been so intensified as they are now. The federal government, which has established itself as the trustee over Indian property rights, is now facing serious conflicts of interest between its duty to protect, preserve and enhance Indian property rights, and its role to respond to its non-Indian citizens, and

WHEREAS, the result is a climate of anti-Indianism, the likes of which have not been seen in this country since the early days of this nation, and

WHEREAS, the National Congress of American Indians hereby adopts as a policy a commitment to fight to protect all Indian rights that are now, or might in the future, be endangered by this wave of anti-Indianism, and

WHEREAS, the water, which is essential to life, and to which the American Indians have substantial legal rights which are prior and paramount to the rights of non-Indians, has become a focal point in this fight to limit or destroy Indian rights, and

WHEREAS, it has always been, and shall continue to be, the policy of the NCAI to resist wherever possible, and with all legal means available to us, all efforts, from any quarter, to limit or destroy the rights that have been reserved to us in solemn legal treaties

NOW THEREFORE BE IT RESOLVED, that NCAI adopts as its policy

1. INDIAN WATER POLICY

Indian rights to use of water are invaluable interests in real property, full equitable title to which resides in the tribes. Those rights are private in character. They are protected against violation by the Fifth Amendment to the United States Constitution.

All federal policies, legislation and jurisdiction must take cognizance of the distinction between Indian rights and federal rights. It is the obligation of the United States, as trustee, rigorously to adhere to that distinction and failure to do so is a violation of the trust responsibility owing to the tribes.

The United States, as trustee, has an absolute obligation to preserve, protect and conserve Indian rights. As trustee, moreover, it is the obligation of the national government to construct, or provide funds for the construction by the tribes of Indian water resources projects which will permit the Indians fully to exercise their rights to meet their present and future water requirements for all purposes.

The tribes and the United States trustee have preempted all power, authority, jurisdiction and control of Indian rights to the use of water. The tribes have the full authority to administer, control and allocate the water resources on their reservations.

When the United States trustee has been requested by the tribes to assist them in the management and control of their water resources, that assistance will be provided by the trustee to the extent of the tribal request.

By the Constitution of the United States, Indian Affairs, including Indian rights to the use of water, are immune from State control or violation. Indeed, the Western States were admitted into the union predicated upon a disclaimer by the States of all right, title, interest, jurisdiction and control over Indian properties, including Indian Water Rights.

2. CONSENT OF TRIBES ON ALL FEDERAL POLICIES AND LEGISLATION AFFECTING INDIAN WATER RIGHTS.

The consent and agreement of Indian tribes must

be obtained in the developed and implementation of any and all federal policies or legislation that affect in any manner, Indian Water Rights.

The tribe or tribes affected by any of these policies or legislation must agree to each policy or legislation before it is adopted and before it is implemented. The trust responsibility of the United States and the private ownership of Indian water rights by tribes require this tribal consent. Adverse policy formed and carried out without tribal agreement is confiscation and is subject to the strictures of the Fifth Amendment of the United States Constitution.

3. FUNDING FOR CONSULTATION WITH TRIBES.

The President's Water Policy clearly commits the Executive Branch to consult with the tribes involved, in the carrying out of the policy. During the course of this consultation process, funds will be needed in order that the NCAI can assist the tribes in the process. The BIA should be approached for funds to carry out this process under a plan to be developed as rapidly as possible by the NCAI staff and submitted to the BIA for funding.

Moreover, the consultative process must be of this nature. If the Indian tribes disagree with any policies which are being advanced by any federal agencies or departments, the policies must be revised to conform with the wishes of the tribes.

4. FUNDING OF INDIAN LEGAL COUNSEL.

Indian Water Rights have been recognized and established largely as a result of litigation. Increasing competition for scarce water resources means that litigation will continue to play a predominant role in the formulation and protection of Indian Water Rights. The United States, as Trustee of Indian water resources, owes a duty to act solely in furtherance of that trust. However, the United States has expressed and continues to express positions in numerous cases in conflict with Indian interests and in derogation of the trust responsibility. The United States has not been candid or timely in disclosing the existence of such conflicts of interest. In such cases, adequate representation of tribal interest requires private retained

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attorneys of the tribes' own choosing.

It is therefore the position of the NCAI that the amounts authorized and appropriated in the Department of Interior budget for retaining private attorneys to represent tribal interests should be significantly increased, and that the decisions as to whether a conflict exists and when private attorneys are needed should be left solely to the tribes whose interests are at stake.

5. DEVELOPMENT OF CRITERIA FOR CLASSIFYING INDIAN LANDS.

The July 12, 1978 Presidential directive concerning federal and Indian reserved water rights requires the Bureau of Indian Affairs to develop technical criteria for Indian land classification. The criteria to reflect and make allowance for water use associated with the maintenance of a permanent Tribal homeland.

The basis for the determination of water requirements for all purposes, including but not limited to agriculture, must be determined by each tribe predicated upon the facts and legal background found to exist on each individual reservation. The measure of what is practicably irrigable is a matter which must be determined in accordance with the criteria set forth immediately above. Moreover, the Indian rights to the use of water may be exercised for any purpose as determined by the governing body of each Indian tribe. The National Congress of American Indians strongly opposes the imposition by the Department of the Interior of criteria for the classification of Indian lands.

6. SUCCESSORS TO INDIAN LANDS.

Successors in interest to formerly allotted Indian land do not acquire reserved rights to the use of water to the extent that the Indian allottee was using water when the land passed out of Indian ownership, rather, title to these rights to the use of water resides in the Indian Nations and tribes from time immemorial.

7. AMENDMENT OF THE McCARRAN AMENDMENT.

An amendment to 43 U.S.C. 666 (the McCarran Amendment) should be enacted exempting Indian rights to the use of

21

water from the applicability of the Act,

8. INDIAN WATER PROJECTS

The administration must implement the immediate development of Indian water resources by forthwith making available , at the reservation level, a program and funding which will plan for and utilize Indian surface and groundwater resources. The tribes must have a program that adopts the best and soundest means of protecting, preserving, utilizing, and conserving the Indian Winters Doctrine rights or other rights to the use of water. Those rights are now being threatened, abridged, or lost through the long-time policy of the Department of the Interior which refuses to develop Indian sovereign rights to the use of water for the benefit of Indian people. Furthermore, the Administration must establish a fund to pay the cost of litigating Indian water rights by the tribes themselves.

9. UNITED STATES VS TRIBES

To properly implement the trust responsibility of the federal government and to avoid conflicts of interest, the Department of Justice and the Solicitor's Office of the Department of Interior will not adopt any legal position that conflicts with the position of the tribe affected.

10. TRIBAL PARTICIPATION IN COMMISSIONS

In view of the great magnitude of Indian interest in national water resources, tribal governments should be directly represented as voting members of national, regional, and interstate water regulation and water policy planning bodies and commissions, including Interstate Compact Commissions, Interbasin Commissions, River Basin Commissions, and others.

11. NO QUANTIFICATION OF INDIAN RIGHTS

Quantification of Indian Winter's Doctrine Rights is neither necessary nor desirable at this time. A final determination, made at any given date, is inconsistent with the open-endedness of the right itself.

CALEB SHIELD, TRIBAL COUNCILMAN
ASSINIBOINE & SIOUX TRIBES
FORT PECK INDIAN RESERVATION
P.O. BOX 1027
POPLAR, MONTANA 59255

Name

Address

The State of Montana has no constitutional authority to regulate water owned by Indian reservations. Both the enabling legislation and the Montana constitution disclaim all right and title to all lands owned or held by any Indian tribe. Court cases have held that lands reserved for Indians include water since it is recognized that land is worthless without water.

This bill is a taking of Indian water. According to a prominent special counsel for the state of Wyoming proposed takings of Indian water are even worse than the land takings of the 19th century. Even though a state court system is set up to meet the requirements of the McCarran Amendment as interpreted by the courts in the Aiken case, this court system is for one and only one purpose--- to quantify existing uses of water and establish a priority system based on existing uses at the time of diversion.

It is ridiculous to assume that Indians have to develop and use their own water at the same rate and in the same manner as the rest of the State of Montana. Legal precedent such as in Arizona vs. California clearly has stated that Indian rights can be reserved for future uses.

As this legislation stands, Indians will lose all rights to their water because they might not be using or exercising water. In the same way that the rest of Montana is exercising water. This is punishment of Indians for not using and in many cases destroying water as fast as whites.

Furthermore, the proposed court system established state control of Indians on reservations which from my interpretation of the law is clearly illegal. Only the duly elected tribal governments can regulate the activities of Indians on reservations.

The definition "beneficial use" of water does not recognize cultural, religious and spiritual water uses. The ~~WISB~~ Northern Cheyenne, as do many other tribes, have many religious, spiritual and cultural uses of water. There is no provision in the act that recognizes these uses as beneficial. In addition, Indians have received very little financial assistance in developing their own water resources. This bill penalizes them for

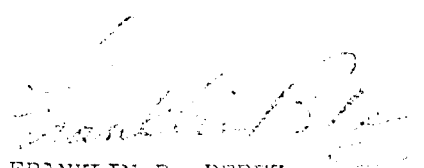
the lack of concern the fed. gov. and the state of Montana have shown in helping
This bill should be amended to clearly exclude Indian Reservation from jurisdiction under the bill. It is our interpretation that to not do so is both clearly illegal and immoral. To ~~do~~ not do so will result in costly litigation for the state of Montana, and will be a blemish forever on the integrity of the people of the state of Montana.

4/12

As evidence in the proposed Senate Joint Resolution No. 1, and a recent meeting between tribal and state leaders on Indian Legal Jurisdiction, an attempt by state and tribal governments to establish working cooperative relations is currently in progress.

To seriously consider Senate Bill 76, is to jeopardize fragile and controversial negotiations between tribal and state governments. Further the subcommittee on water rights is assuming that the state has existing water jurisdiction on federal Indian trust lands, which certainly is not the case; as assumed in Senate Bill 76.

The economics of this piece of legislation alone is prohibitive.


FRANKLIN R. PEREZ
VICE PRESIDENT
FORT BELKNAP INDIAN COMMUNITY

19 January, 1979

Sen. Jack Galt, Chairman
Agriculture, Livestock & Irrigation
MONTANA STATE SENATE
Capitol
Helena, MT 59601

Dear Senator Galt. . . .

First, I am strongly in support of Senate Bill 76 to create districts and establish courts to adjudicate claims of existing water rights in Montana.

Second, I have a self-interest, which I hope is not a conflict of interest, in that I am a member of the Judicial Nominating Commission of the State of Montana.

Originally this legislation, when proposed in the 1977 legislative session, provided that water district court judges would be selected through the Judicial Nominating Commission nomination/gubernatorial appointment process established by statute in response to the 1972 Constitution.

Now, SB76 has been changed in this regard to establish a new and separate water judge nominating commission (Sec. 9).

I disagree with this procedure and will detail my reasons.

- 1) The Judicial Nominating Commission already exists and has the necessary organization, printed rules and regulations, carefully developed application forms and questionnaire, and extensive experience. The Commission, since its creation in 1973, has participated in the nomination of the state's chief justice, one associate justice, the worker's compensation court judge, and five district judges. By the criteria of public acceptance, elective confirmation, and legal fraternity approval, all have been successful. The Commission has been lauded editorially by the major daily newspapers in the state for its procedures, nominations and results.
- 2) The Commission has agreed to prepare a special water judge questionnaire and consult with legislators, agriculturalists, and others interested in water rights adjudication in doing so. Also, District Judge W. W. Lessley of Bozeman is chairman of the Judicial Nominating Commission and widely acknowledged as a top state authority on water law, making him (and the Commission) specially qualified for this task. In fact, Judge Lessley was called in as one of an extremely few expert witnesses to testify when this legislation was being developed in 1977.
- 3) There are several confusing and possibly contradictory provisions in SB76 in regard to the water judges and the proposed water judge nominating commission. Sec. 1 (3) says the governor shall designate one water judge to serve as chief water judge, but Sec. 9 (4) says

the water judge nominating commission shall nominate three persons for the position of chief water judge. It would appear that this nominating action would serve only to eliminate one of four water judges from consideration as chief, a rather extensive procedure for a solitary negative effect. Sec. 9 (4) also calls for five nominations (and no less) for each water judge, which presumes a total of 20 qualified people in the four districts, which might or might not be true, with these particular qualifications. A lesser maximum or the provision of a minimum would be more apt to make possible the submission of only fully qualified persons to the governor for possible appointment. Sec. 9 (5) in its ultimate reference to "nominating commission" is not clear as to whether the Judicial Nominating Commission or the water judge nominating commission is meant. Sec. 9 (6) appears to put the water judge nominating commission out of existence before nominations are made for a chief water judge.

- 4) Sec. 9 (6) and Sec. 10 (1) of SB76 both apparently call for utilizing the Judicial Nominating Commission. If the Commission is considered competent to select water judge replacements, it must be competent to select water judges period.

Those are my concerns, Senator Galt, and all could be resolved with a simple provision utilizing the existing Judicial Nominating Commission in SB76.

Legislative control would remain in that the statutory provision for senate confirmation of any appointments would apply.

I hope you will consider my remarks pertinent and convey a copy of this letter to each of your committee members.

I believe it is significant that the members of the Judicial Nominating Commission consider SB76 to be needed for its general provisions despite disagreement with the judicial selection procedures.

Thank you, Senator Galt, for your consideration.

Cordially yours. . . .



Joe A. Renders
P. O. Box 6636
Great Falls, MT 59406

14
January 16, 1970

Senate Agriculture Committee and House Select Committee on Water:
Chairmen: Senator Jack Galt and Representative Willie Day:

Chairmen and Members of the Committees, my name is Vernon L. Westlake and I am here this evening representing the Agricultural Preservation Association from Gallatin County. For the record, the A.P.A. supports Senate Bill 76 as it was introduced and recommends to the Committees that the Bill be passed without amendments.

We want to take this opportunity to commend the Interim Water Rights Committee and the Chairman, Representative John Scully, for all the time spent and efforts made in the preparation of this piece of legislation.

Montana needs a Water Use Inventory to guarantee Montana water users the future use of Montana water. Senate Bill 76 will implement the system that is necessary to prepare just such a Water Use Inventory.

We strongly urge your support of Senate Bill 76, as we feel it will satisfy the immediate need regarding Montana water. We feel also, that it is only fair to say that A.P.A. will withdraw its support of the Bill if the Bill is amended in any manner so that the Water Use Inventory would not be the primary objective of the legislation.

A.P.A. believes that Senate Bill 76 is an excellent bill and deserves your strong support. Thank you for this opportunity to speak in behalf of this bill.

Respectfully submitted,

Vernon L. Westlake

Vernon L. Westlake, Director
Agricultural Preservation Assn.
Gallatin County

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western union
Tel

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PMS SENATOR JACK GALT

STATE HOUSE

HELENA MT

WE THE PARK COUNTY LEGISLATIVE ASSOCIATION DO WANT TO GO ON RECORD
AS BEING IN FAVOR OF SENATE BILL 76. YOU HAVE OUR WHOLEHEARTED
SUPPORT

TOM LANE PO BOX 1238 LIVINGSTON MT 59047

NN

WJ TLX B PTL ♦

WJ AGENT HEL

SENATE Agriculture COMMITTEE

BILL SB 76

VISITORS' REGISTER

DATE 1-19

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPP
Zack Stevens	Mont. Farm Bureau	SB 76	☒	
Vicki Johnson	Stillwater Co, Water ^{to Sew} Assn		☒	
Kenneth Voldseth	SELF	SB 76	☒	
Erute Hereim	SELF	SB 76	☒	
Gordon McHowan	MONT. R.R. & L	SB 76	☒	
R.C. Bowman	M.S.U.	SB 76	☒	
Villa Hall	League of Women Voters ?	SB 76	☒	
Peter Jackson	Water - Mont		☒	
Steve Brown	State	SB 76	☒	
W. H. Hibbert Jr.	SELF	SB 76		☒
E. E. Edens	Self		☒	
John E. Hall	State Land Dept.	SB 76	☒	
George M. Bellin	State Senator		☒	
Ronald E. Waterman	B.N. Inc.	SB 76	☒	
Donald Anderson	Landmark county and		☒	
Barnett			☒	
Smith	N.R.R.C.		☒	
Smith Clark	Rail Road Bond		☒	
Jim Bennett	myself and others	SB 76	☒	

VISITORS' REGISTER

HOUSE _____ COMMITTEE

Date _____

SUPERVISOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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VISITORS' REGISTER

HOUSE SELECT WATER COMMITTEE

SENATE BILL NO. 76

Date 1-19-79

SPONSOR Paul F. Boylan

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPP
Carl M. Davis	Helena	Clark County U.S. B.		
Mike Watson	Helena	Mont. Inter-Tribal Bd.		
CALEB SHIELDS	FORT PECK TRIBES	FORT PECK		
PHILIP E. ROY	BROWNING	BLACKFEET		
Daniel C. Bogg	"	"		
Rubie Sogkhis	NORTHERN CHEYENNE	LAME DEER		
Tom Pablo	Flathead	Pablo		
Franklin R. Perez	Fort Belknap	Spokane		
Mons. Terpen	Helena, Mt.	MT. STOCKPILING & LOGGING		
Charles	Browning, Mt.	Self		
John H. Morrison	Helena	MWDA		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE SELECT COMMITTEE ON WATER

January 19, 1979

The joint hearing of the House Select Water Committee and the Senate Agriculture Committee was called to order by Chairman Galt in the House Chambers at 7:30 p.m. on the above date. The purpose of the meeting was a public hearing on Senate Bill No. 76. Chairman Galt and Chairman Day explained how the testimony would be handled.

Senator Boylan was the chief sponsor of the bill. He was the first signer of the bill but stated it was actually drafted from the interim water committee. This committee consisted of Representatives Scully, Ramirez, Day, Roth, and Senators Galt, Turnage, Bergren, and Boylan.

Representative Scully stated that this bill was introduced at the request of the interim committee. He felt this was one of the major problems in Montana, how to preserve our water. The bill was drafted with the help of the Department of Natural Resources and Conservation. There were seven hearings held throughout the state in order to get the public input. He then went through the bill and generally explained some of the provisions in it.

We estimate that 275,000 claims will be filed in the next four years at the rate of 40 dollars per claim. The fiscal note is attached.

The water bill, as it is now, has some parts that could be revised to make it a more successful bill.

PROPOSERS:

Zack Stevens, representing the Farm Bureau, Farmers Union, NFO, Grange, WIFE, Agricultural Preservation Association, Montana Dairyman's Association, and the Montana Graingrowers Association. This represents 80,000 Montana's. Testimony is attached, exhibit #1.

Representative Vicki Johnson, District No. 72, spoke in behalf of the Stillwater County Water Users Board. Testimony is attached, exhibit #2.

Gordon McGowan, a rancher from Highwood Montana and a lobbyist for the Montana Railroad Association. He had been a Senator for 20 years and perhaps introduced more legislation in the field of water than anyone in the states history. He introduced the bills that are now the current water laws of the state. Testimony attached, exhibit #3.

Senator Steve Brown, District No. 15, was one of the 14 co-sponsors of the bill. There is nothing more important in the state than the adjudication process to preserve the water for Montana and protect it from downstream users. He stated that the disqualifications for water judges was a problem. He felt the Montana Supreme Court should be allowed to create special rules for the water courts. He felt the process had to be fully funded in order for it to succeed.

The retirement fund for judges should come from the filing fees rather than them being members of the Montana judges' retirement system. He

felt the 40 dollar filing fee should be for every claim.

Mons Teigen, Montana Stockgrowers Association and Montana Woolgrowers Association. These two organizations support Senate Bill No. 76. He stated that in the past we have had enough water but the time has come to get our water bonafide because downstream users are looking at it.

Representative Burnett, District No. 71, was present representing not only himself, but the Red Lodge Creek water users, Cooney Dam water users, Rock Creek water users, Clarks Fork water users and the Wearst Ditch Company. In general they agreed with the bill. Testimony and letters from the people he was representing is attached, exhibit #4.

Willa Hall, representing the League of Women Voters testified next. She said it was vital that the adjudication process be completed as soon as possible. Her testimony is attached, exhibit #5.

Pete Jackson, representing WETA and himself as a rancher. He is in strong support of the bill and commended the committee on the work they had done. His water had been adjudicated in 1914. After applying for a permit through the DNRC it was a long slow process. The process was just completed one month ago.

Pat Smith, Northern Plains Resource Council. He stated they appreciated the committees work during the interim. This bill would strengthen Montana's claim to water. He felt the filing fee discriminated against the small man because of the 40 dollars per claim and the limitation of 480 dollars.

Kenneth Clark, Railroad Brotherhood, arose in support of the bill.

John North, Department of State Lands, recognize that it is of the utmost importance to declare and adjudicate the water rights in the state. His testimony is attached, exhibit #6.

Knute Hereim, representing himself, said he didn't feel the water judges in each district would be able to handle all of the filings. There caseload would be too heavy. He felt the filing deadline of four years should be shortened to approximately 1 1/2 years.

Ron Waterman, attorney for Burlington Norther, stated that this was the second session that the bill has been before the legislature. The two years have been well spent to bring about a good bill. The lack of adjudication prevent the state of Montana from protecting its water resources from raids from other states. He brought up and incident on the Big Horn River in Wyoming. This bill places it in a single court to adjudicate the claims and have a final decree instead of going to both the state court and federal court.

Judge Brownlee, Judge of the district court, fourth judicial district, Missoula, Montana. His testimony is attached, exhibit #7.

This concluded the proponents to the bill. Chairman Galt then called for the following people who were registered as non-committals.

Ted Doney, Department of Natural Resources, said that two years ago he had reported to the legislature that the adjudication process was not working and it has not gotten any better. The present system is not working because it takes the staff too long to go out on the sites. The primary goal has to be that we try to achieve documentation of our water. We want to protect ourselves from down stream states. He said the bill was actually in two phases. They agreed with the first phase - filing, but they questioned the mandatory court adjudication process. All that is required in most cases is some type of legal documentation. He didn't think that water rights could ever be adjudicated statewide through the courts. No state has ever completed an adjudication process through the courts. He felt the court process was too costly, especially to the claimant. They recommended that the claim system outlined in the bill be adopted without the court adjudication system, but with an optional court adjudication system when needed. Attached is a report from the DNRC of the interim study, exhibit No. 8.

W. G. Gilbert, Jr., attorney from Dillon, representing himself, spoke next. He stated that he has tried many water suits in Beaverhead County. He said if you limit the Governor in his appointment to the three that are nominated, after the Governor appointed the chief water judge it should be made clearer that the remaining appointees should include those that were not selected for appointment of chief water judge not only those among the list of nominees presented by the water judge nominating committee.

Attached is testimony from Vernon L. Westlake, Agricultural Preservation Association and Joe A. Renders, Great Falls, exhibits No. 13 and 14.

OPPONENTS:

Carl Davis, attorney, representing the Clark Canyon West Company, which represents 190 water users and 50,000 acres of land. He stated that we don't have to act in haste as we appear to be doing in this bill. He agreed with the two phases that the DNRC had brought out. He didn't feel that the rights that had already been decreed should have to go through the process of filing. If you give the district court judge the power that is in this bill then he should have the power to decide what areas should be handled first. He felt the bill gave the judges too much power. There is nothing in the bill to disqualify a judge. The judge can only disqualify himself. The 30 days to get the appointments made after the bill is enacted is not a long enough period of time. He felt the filing date should be staggered so everyone would not be waiting until the last few weeks to file.

Philip E. Roy, Montana Inter-Tribal Policy Board, stated that they have full legal rational why the reservations should be amended out of the bill. The Indian water rights should not be confused with the federal reserved rights. He felt this bill would be advertising that

Montana has surplus water. His testimony is attached, exhibit No. 9.

Mike Watson, Montana Inter-Tribal Policy Board, also mentioned that Indian water rights are different than federal reserve rights.

Caleb Shield, Fort Peck Tribes, attended a meeting for the National Congress of American Indians and they had adopted a resolution. He submitted the resolution to the committee which is attached, exhibit #10.

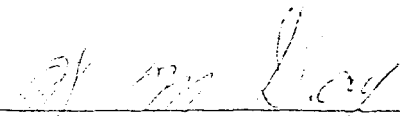
Frank Perez, Fort Belnap, Vice-President, arose in opposition to the bill and presented written testimony to the committee, exhibit #11.

Rubie Sooktis, Northern Cheyenne Indian, submitted written testimony which is attached, exhibit #12.

Representative Scully then closed. He said the interim committee knew it would not be an easy task. He felt we had to give the bill the opportunity to work and by putting it off we would never know if the process would work. If we don't try something the federal raid on Montana water will come through. The bill has the mechanics to make the adjudication process work. The bill can assist anyone in the transfer of water.

Questions were asked by the committee and the hearing was closed.

The meeting was adjourned at 11:15 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

January 26, 1979

The seventh meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Galt at 1:00 p.m.

ROLL CALL: All members were present with Senator Nelson present at 2:00.

The witnesses that were present to give testimony are attached on the Visitor's Register.

Senator Galt stated that this meeting would be just to consider proposed amendments to Senate Bill 76.

CONSIDERATION OF SENATE BILL 76: An amendment was presented by the Montana Association of Counties. Mr. Dean Zinnecker was not able to be present. This amendment is attached, see exhibit #1. The proposed amendment deals with the county expenses and they do not want to get burdened with extra expenses. Senator Boylan felt the amendment was not complete enough.

Senator Kolstad moved the amendment. Motion carried. Senator Boylan voting No. Senator Nelson absent.

Representative Sivertson asked if the committee had addressed the problem of forcing the people to refile that already have rights. Senator Galt said this was not in the form of an amendment so would not be considered at this time.

Mr. Philip Roy, Inter-Tribal Policy Board presented an amendment. See exhibit #2. After consulting with many people, including the Department of Interiors they came up with this amendment. He said there is no mention made in the bill of the reserved water rights for Indians. The amended language has ample legal justification. They feel the Indian water rights are private property rights, distinguishable from federal water rights. He felt this was imperative for a clear understanding of the bill.

Mr. Bob Jarvis, Blackfeet Tribal Council, believed that water rights was a concern for all Montana, but he felt this bill would hurt the small farmer considerably.

Ted Meridth, Inter-Tribal Policy Board, said there is a movement by the tribes to consider working with the states to solve some of these problems. The tribes would like to be exempt for now, so they could have some time to work on these problems.

Tom Witford, Montana Tribal Policy Board, said they had

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met early in the day with several members of the House and felt progress had been made. They plan to meet with the House members again in a few weeks to see if they could develop some approach to the problem rather than go through litigation.

Caleb Shields, Fort Peck Tribes, stated that the Indians are as concerned about water leaving the state as anyone.

Bill Marshall, Flathead Tribes, said the Flathead Tribal Board has issued water permit for non-Indians.

Senator Graham said the complete exclusion that they were asking for disturbed him. He said at some time the Indians will have to be put into the law so the state will have some record of Indian rights. He asked if they felt strongly that they had to be excluded from coming under the act in any way.

Mr. Roy said for them to be included at this time would hurt them legally. When asked if the Indian people were recognized as having water rights would coming under the bill still hurt them his reply was yes.

Senator Galt suggested that the Senate Committee reject the amendment and let them be presented to the House Committee if the bill gets there.

Senator Kolstad asked Mr. Roy if excluding the Indians would affect the adjudication process. Mr. Roy said it would affect the adjudication process but having the Indians within the state's adjudication process and in the bill would be illegal. He said Montana is not ready for adjudication and he felt it would be a serious error to go ahead with the bill. When asked how the state could go ahead with any adjudication without knowing the Indians rights, Mr. Roy said there are plenty of other areas to start on. He wondered what the urgency was in having the Indian reservations in the bill. He said it was totally contrary to all federal laws.

Representative Burnett, #71 presented an amendment on behalf of the Rock Creek Waters Users Association, see attachment #3. Their proposed amendment would give the legislature 8 members instead of 4, do away with the Governor and the bar and give the Supreme Court the authority to select the judges. They felt the Legislature was more expressive of the peoples desires. The amendment would eliminate the permit system and you would not have to go through the DNR to file suit.

Dave Cogley, attorney from Legislative Council, said there could be a constitutional problem. The constitution indicates that the district court have complete jurisdiction. He said you could give both boards concurrent jurisdiction, but then there would probably be a problem with administration. He felt the best way to go would be toward a constitutional amendment.

Representative Burnett said the time limit for selecting the committee was taken out. He did not feel the 30 days was

long enough, but said he would not object to putting in a longer deadline.

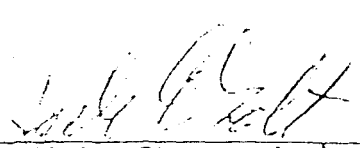
Ted Doney, presented the committee with three different sets of amendments. He said the Department of Natural Resources does not think that adjudication through the court process is mandatory. The attachment marked #4(1) would take the water judge out and has some clerical amendments. The set marked #4 (2) would leave the water judges in, but does have several other amendments. They also presented a copy of the bill the way it would appear if set #4(1) were adopted. See attachment #4(3).

Ron Watterman, Burlington Northern, presented an amendment to the bill, attachment #5. He said at present the bill calls for a \$40 filing fee. He said some concern had been expressed that everyone who has a water right might delay in filing their rights until the last few weeks. To encourage people to file early his amendment would reduce the fee in half for the first two years. This would encourage people to file between now and 1981. This would also spread out the filings. Senator Boylan mentioned that this could cut down on the revenue. Mr. Watterman said he would not object to the fees being more, the last two years to bring the revenue back up. When asked about the conflict between water judges and district judges, Mr. Watterman felt the better way to go would be toward a constitutional amendment to give the water judges single jurisdiction.

Mr. Pat Smith, Northern Plain Resource Council, submitted testimony which is attached #6, concerning the filing fee provision. They propose that on page 14, section 19, lines 11 and 12 be deleted. The language as it appears now favors the large water right holder. He felt the proposed amendment would be a more equitable fee schedule. He said this too could have an impact on the revenue generated. Senator Galt said this provision was put in to help the small irrigated farms. He said some small places even though the quantity of water isn't there, there may be many rights. During this discussion it was also brought out that stock water reservoirs would require a claim and a filing fee.

Senator Jegeson asked if a declining fee for the number of water rights was ever discussed. Representative Roth a member of the interim committee didn't think it had been. The \$40 filing fee was a recommendation from the DNR.

There being no further amendments the meeting was adjourned. Another meeting will be held on Monday, January 29 to further discuss the amendments.



SENATOR JACK E. GALT, Chairman

Date 1-26

ROLL CALL

AGRICULTURE COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. KOLSTAD	✓		
SEN. AKLESTAD	✓		
SEN. BOYLAN	✓		
SEN. CONOVER	✓		
SEN. GRAHAM	✓		
SEN. HAGER	✓		
SEN. NELSON	2:00 ✓		
SEN. GALT, Chairman	✓		

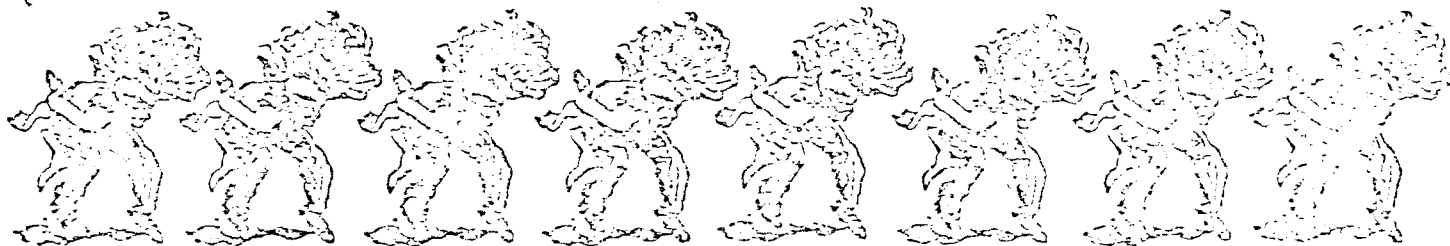
Each Day Attach to Minutes.

Amend SB 76 on page 14, following Section 19, subsection (2) by inserting the following:

"NEW SECTION. Expenses to be borne by state. All expenses encountered as a result of this act are to be paid from the earmarked revenue fund of the state treasury. Expenses shall include, but not be limited to, the salaries and expenses of personnel; equipment; office space; and other necessities of the water courts. If sufficient revenue is not available from the earmarked revenue fund, said expense shall be paid from the state's general fund."

Renumber following sections.

Montana Assoc of Counties
Dean Zinncke



Montana Inter-Tribal Policy Board

300 North 25th St., Suite 103 • Billings, MT 59101 • (406) 245-2228

PROPOSED AMENDATORY LANGUAGE TO SENATE BILL NO. 76

NEW SECTION. Section 4. Jurisdiction of the water court. (1) A

water court has exclusive jurisdiction in matters arising in relation to the determination and interpretation of existing water rights under (this act). With the exclusion, nevertheless, of the Indian right to the use of water which is a separate private property right of Tribes and Indian people, and therefore specifically excepted from all provisions of this act. This act shall not apply to any water rights owned by any Indian or Indian Tribe or reserved for the benefit of any Indian or Indian Tribe. It is the intent of the legislature that all such matters be brought in or immediately transferred to a water court unless witnesses have been sworn and testimony has been taken by the district court.

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B. G. G.
B. G. G.

Native Director
B. G. G.
B. G. G.

THIRTEENTH JUDICIAL DISTRICT

COUNTIES:

BIG HORN
CARBON
STILLWATER
TREASURE
YELLOWSTONE

Charles B. Sande
District Judge
Billings, Montana

January 25, 1979

Rep. James Burnett
Box 16
Capitol
Helena, Montana 59601

Dear Jim:

In regard to your recent inquiry concerning matters relating to water rights adjudication, I would suggest for your consideration, the following:

Under the present rules of Civil Procedure, Rule 53(a) provides as follows:

"APPOINTMENT AND COMPENSATION. Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, and auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party."

I think it would be possible, with some supplementary amendments, to use this as a basis to support an appointment of water adjudicators. It could be provided that they have the same requirements of office as a district judge, and their salary could be set either at the same or perhaps somewhat less than the district judges.

AMENDMENTS TO SENATE BILL NO. 76--AMENDMENTS TO INTRODUCED BILL

- (1) Title, lines 5 through 10
Following: "to"
Strike: remainder of lines 7 through 10 in their entirety
Insert: "generally revise the laws relating to the determination of existing water rights in Montana; amending sections 85-2-112, 85-2-201, 85-2-202, 85-2-203, 85-2-204, 85-2-205, 85-2-206, 85-2-207, 85-2-208, 85-2-209, and 85-2-401, M.C.A."
- (2) Page 1, line 13 through line 1 on page 2.
Strike: Section 1 in its entirety
Renumber: all subsequent sections
- (3) Page 2, lines 2 through 25.
Strike: Section 2 in its entirety
Renumber: all subsequent sections
- (4) Page 3, lines 1 through 7.
Strike: Section 3 in its entirety
Renumber: all subsequent sections
- (5) Page 3, lines 8 through 21.
Strike: Section 4 in its entirety
Renumber: all subsequent sections
- (6) Page 3, line 22 through 6 on page 4.
Strike: Section 5 in its entirety
Renumber: all subsequent sections
- (7) Page 4, line 7 through line 3 on page 7.
Strike: Section 6 in its entirety
Renumber: all subsequent sections
- (8) Page 7, lines 4 through 7.
Strike: Section 7 in its entirety
Renumber: all subsequent sections
- (9) Page 7, lines 8 through 13.
Strike: Section 8 in its entirety
Renumber: all subsequent sections
- (10) Page 7, line 14 through line 25 on page 8
Strike: Section 9 in its entirety
Renumber: all subsequent sections
- (11) Page 9, line 1 through 6.
Strike: Section 10 in its entirety
Renumber: all subsequent sections

- (12) Page 9, lines 7 through 11.
Strike: Section 11 in its entirety
Re-number: all subsequent sections

- (13) Page 9, lines 15 through 16.
Following: "with the"
Strike: "water court for the water court district wherein
the diversion occurs"
Insert: "department,"

- (14) Page 9, lines 18 through 21.
Following: "department"
Strike: "of natural resources and conservation. If
there is a claimed right with no diversion, the
filing shall be made in the district where the use
occurs."

- (15) Page 9, line 25.
Following: "of"
Insert: "the department or"

- (16) Page 10, line 1.
Following: "1973,"
Strike: "as amended,"

- (17) Page 10, line 7.
Following: "shall"
Strike: "exclusively"

- (18) Page 10, line 8
Following: "of"
Strike: "establishing"
Insert: "claiming and determining"

- (19) Page 10, line 10.
Following: line 9
Strike: "[Section 12 through 26]"
Insert: "Part 2 of this chapter"

- (20) Page 11, line 9.
Following: "claimant"
Strike: "may"
Insert: "shall"

- (21) Page 11, line 10.
Following: "graphs,"
Insert: "showing to scale the point of diversion,
place of use, place of storage, and other pertinent
conveyance facilities, and"
Following: "decrees"
Insert: "or pertinent portions thereof"

- (22) Page 11, lines 14 through 15.
Following: "[Section"
Strike: "12] establishes a rebuttable presumption of

- abandonment"
Insert: "1] constitutes forfeiture"
- (23) Page 11, line 18.
Following: "[Section"
Strike: "12"
Insert: "1"
- (24) Page 11, line 20.
Following: "Section 17."
Strike: "Notice of requirement"
Insert: "Order"
- (25) Page 11, lines 21 through 22.
Following: ". The"
Strike: "department"
Insert: "Montana Supreme Court"
- Following: "shall"
Strike: "provide notice of the requirement"
Insert: "upon petition of the department issue an order"
- (26) Page 11, line 24.
Following: "RIGHTS"
Strike: "NOTICE"
Insert: "ORDER"
- (27) Page 12, line 1.
Following: "IN"
Strike: "A REBUTTABLE PRESUMPTION THAT"
Insert: "FORFEITURE OF"
- (28) Page 12, lines 4 through 6.
Following: "This"
Strike: "is notice of commencement of procedures for"
Insert: "order is notice of"
Following: "the"
Strike: "general adjudication of existing rights to the
use of water and of the"
Following: "certain"
Insert: "existing"
Following: "rights"
Insert: "to the use of water"
- (29) Page 12, line 13.
Strike: "notified that"
Insert: "ordered to file"
- (30) Page 12, line 13.
Strike: "notified that"
Insert: "ordered to file"
- (31) Page 12, line 14.
Strike: "is required to file"

- (32) Page 12, lines 15 through 16.
Strike: "water court for the water court district where-
in water is diverted or used for the right claimed"
Insert: "department of natural resources and conservation"
- (33) Page 12, line 21.
Following: "of"
Insert: "the department or"
- (34) Page 12, line 23.
Following: "1973"
Strike: "as amended,"
- (35) Page 13, line 2.
Following: "notice"
Insert: "of the order"
- (36) Page 13, lines 5 through 6
Strike: "department of natural resources and conservation"
Insert: "Montana Supreme Court"
- (37) Page 13, line 6.
Following: "notice"
Insert: "of the order"
- (38) Page 13, line 7.
Strike: "a notice"
Insert: "the order"
- (39) Page 13, line 4.
Following: "of"
Strike: "July"
Insert: "October"
- (40) Page 13, line 13.
Strike: "a notice"
Insert: "the order:"
- (41) Page 13, line 17.
Strike: "notice"
Insert: "order"
- (42) Page 13, line 19.
Strike: "notice"
Insert: "order"
- (43) Page 13, line 24.
Strike: "notice"
Insert: "order"
- (44) Page 13, line 25.
Following: "section."
Insert: "the department shall be reimbursed for such costs
from the water right claim account created by [section 9,
subsection (2)]."

- (45) Page 14, line 1.
Strike: "notice"
Insert: "order"
- (46) Page 14, line 4.
Strike: "the water court"
Insert: "It"
- (47) Page 14, line 5.
Following: "notice"
Insert: "of the order"
- (48) Page 14, line 6.
Following: subsection (5)
Insert: "(6) It may order the the department assist the
court in carrying the court's duties under this section."
- (49) Page 14, line 8.
Following: "[Section"
Strike: "12"
Insert: "1"
- (50) Page 14, line 12.
Following: line 11
Strike: "in any one water court district"
- (51) Page 14, lines 16 through 17.
Following: "decree"
Strike: "or verified as otherwise ordered by the court"
Insert: "or pertinent portion thereof"
- (52) Page 14, line 18.
Following: "right"
Strike: "adjudication"
Insert: "claim"
- (53) Page 14, line 20.
Following: "under["
Strike: "Sections 19 and 22"
Insert: "Section 3"
- (54) Page 14, lines 23 through line 10 on page 15.
Strike: Section 20 in its entirety
Insert: "Section 20. Filing of claims of existing right.
The Montana Supreme Court shall, on or before October 1,
1979, order all persons claiming an existing right to
the use of water to file a claim of the right as pro-
vided in [Section 1]."
- (55) Page 15, line 12.
Following: line 11.
Strike: "water court"
Insert: "claimant"

- (56) Page 15, lines 12 through 13.
Following: "department,"
Strike: "subject to the direction of the water court,"
- (57) Page 15, line 13.
Following: "the"
Strike: "water court"
Insert: "claimant"
- (58) Page 15, line 23.
Following: line 22
Insert: "(3) compile an abstract of the information contained in each claim of existing rights and provide for a copy of the abstract to be made available for public inspection in each county courthouse in the state."
- (59) Page 15, line 23
Following: line 22
Insert: "NEW SECTION. Section 11. Overstating claim-- misdemeanor. A person who in a statement of claim filed pursuant to [section 1 of this act] knowingly or purposely overstates a claimed right in any material respect is guilty of a misdemeanor."
- (60) Page 16, lines 14 through 16.
Following: line 13
Strike: subsection (1) in its entirety
Re-number: all subsequent subsections
- (61) Page 16, line 19.
Following: "[Section"
Strike: "12"
Insert: "1"
- (62) Page 16, line 21.
Following: "the"
Strike: "water court"
Insert: "department"
- (63) Page 16, line 22.
Following: "investigation"
Strike: "and;"
Insert: "."
- (64) Page 16, lines 23 through 24.
Following: line 22
Strike: subsection (4) in its entirety
- (65) Page 16, line 25 through 20 on page 16.
Strike: section 22 in its entirety
Re-number: all subsequent sections

- (66) Page 16, line 21 through 23 on page 17
Strike: section 23 in its entirety
Renumber: all subsequent sections
- (67) Page, line 24 through 7 on page 19.
Strike: section 24 in its entirety
Renumber: all subsequent sections
- (68) Page 17, lines 8 through 18.
Strike: section 25 in its entirety
Renumber: all subsequent sections
- (69) page 17, line 19 through 4 on page 20
Strike: section 26 in its entirety
Renumber: all subsequent sections
- (70) Page 20, lines 5 through 15.
Strike: section 27 in its entirety
Renumber: all subsequent sections
- (71) Page 20, lines 16 through 19.
Strike: section 28 in its entirety
Renumber: all subsequent sections
- (72) Page 20, line 20 through line 16 on page 21.
Strike: section 29 in its entirety
Renumber: all subsequent sections
- (73) Page 21, lines 17 through 22.
Strike: section 30 in its entirety
Renumber: all subsequent sections
- (74) Page 21, line 23 through 6 on page 22.
Strike: section 31 in its entirety
Renumber: all subsequent sections
- (75) Page 22, lines 7 through 20.
Strike: Section 32 in its entirety
Renumber: all subsequent sections
- (76) Page 22, line 21 through 22 on page 25.
Strike: Section 33 in its entirety
Renumber: all subsequent sections
- (77) Page 25, line 8.
Following: "declarations,"
Insert: "claims of existing right,"
- (78) Page 25, line 10.
Following: "declarations,"
Insert: "claims of existing right,"

- (79) Page 25, line 13.
Following: "of"
Strike: "all"
- (80) Page 25, line 22.
Following: "declarations"
Strike: "with the department"
Insert: "with-the-department"
- (81) Page 25, line 23.
Following: "with"
Strike: "a water court"
Insert: "the department"
- (82) Page 25, line 25 through 5 on page 27
Strike: Section 35 in its entirety
Renumber: all subsequent sections
- (83) Page 27, line 6 through line 6 on page 28.
Strike: Section 36 in its entirety
Renumber: all subsequent sections
- (84) Page 28, line 7.
Following: line 6
Insert: "Section 12. Section 85-2-201, M.C.A. is amended to read: determination of existing rights. (1) The department shall establish a centralized record system of ~~all~~ existing rights, and the department ~~shall-as-seen as-practicable~~ may at its discretion, begin proceedings under part 2 of this chapter to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights. to be determined.
- (2) The department may select and specify areas or sources with a need for determination of existing rights is ~~most~~ urgent ~~first~~ begin proceedings under part 2 of this chapter to determine existing rights in those areas or sources."
- Renumber: all subsequent sections
- (85) Page 28, line 7.
Following: line 6
Insert: "Section 13. Section 85-2-202, M.C.A is amended to read: 85-2-202. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include but is not limited to:
- (1) court decrees adjudicating water rights in a proceeding commenced prior to July 1, 1973. Upon request

of the department, the clerks of the district courts shall furnish the department copies of all decrees effecting water rights.

(2) declarations of existing rights filed on 85-2-203;

(3) records of rights acquired under the groundwater code (chapter 237, Laws of 1961, as amended);

(4) notices of appropriation filed under section 3, chapter 345, Laws of 1969 and section 6, page 131, Laws of 1885, as amended;

(5) records of declarations filed under section 17, chapter 35, Extraordinary Laws of 1933, and section 9, page 132, Laws of 1885, as amended;

(6) records of statements filed under 85-20-104;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes-;

(9) claims of existing right filed under [section 1 of this act]."

Renumber: all subsequent sections

(86) Page 28, line 7.

Following: line 6

Insert: "Section 14. Section 85-2-203 is amended to read: 85-2-203. Declarations of existing rights. Unless the period for the filing of claims of existing rights pursuant to [section 1] has commenced:

(1) The department shall, when it begins proceedings to determine existing rights in an area or source, obtain from the district court pursuant to 85-2-204 an order ~~pursuant to 85-2-204~~ requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one year after the effective date of the order. The department shall publish notice of the order once a week for four consecutive weeks prior to its effective date in a newspaper of general circulation in the effected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from

the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of this notice by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

~~(2) -- The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determination under part 2 of this chapter, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 17, 1973, is or was a beneficial use.~~

~~(3)~~ (2) A declaration shall be made under oath of each person claiming an existing right to use water within a specified area or from the specified source on the form provided by the department. The department shall make the form available through its offices and the offices of the county clerk and recorders. The information required by the department may include but is not limited to the date of appropriation; the date the water was first applied to a beneficial use; the amount of water appropriated; the purpose of the appropriation; the place and means of diversion; the place of use; the time during which the water is diverted and used each year; and a true copy or the docket number of any judicial decree, notice, or other claim or residence upon which the existing right was initiated or is based.

~~(4)~~ (3) Declarations shall be sent to the department by certified mail, with a return receipt requested. Return receipt is conclusive evidence of receipt of the declaration by the department."

Renumber: all subsequent sections

(87) Page 28, line 7.

Following: line 6.

Insert: "Section 15. Section 85-2-204, is amended to read
85-2-204. Filing of petition. (1) Proceedings for the determination of existing rights shall be commenced by the department in the district court of the judicial district in which the source or area is located. The department shall request by petition and that the district court shall accept jurisdiction of the determina-

tion of existing rights within the area or from the source specified in the petition. Issue an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration as provided in 85-2-203.

(2) If the source of our area is in two or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within 30 days of receipt of the notice, the judges of those district courts shall agree on which district shall receive the petition and shall notify the department their decision. If the district judges fail to agree or notify the department, the department shall file the petition in the district court of the judicial district in which it determines the greatest number of existing rights are likely to be located."

Renumber: all subsequent sections

(88) Page 28, line 7.

Following: line 6

Insert: "Section 16. Section 85-2-205 is amended to read:

85-2-205. ~~Contents of petition~~ Data filed with court.

(1) Within a reasonable time after gathering all data necessary under 85-2-202, the department shall file with the district court the names of all persons who have filed a declarations declaration under 85-2-203 and the names of all persons who have filed a claim of existing right under [Section 1]. ~~and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.~~

(2) The department shall also file with the district all data gathered under 85-2-202.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data."

Renumber: all subsequent sections

(89) Page 28, line 7.

Following: line 6.

Insert: "Section 17. Section 85-2-206 M.C.A. is amended to read: 85-2-206. Preliminary decree. (1) Within a reasonable time after the department files with the district court the material required by 85-2-205, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted by the department and on any additional data obtained by the court.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the person requesting the hearing disagrees. The request shall specify the paragraph and pages containing the findings and conclusions to which objection is made. The request shall state specific grounds and evidence on which of the objections are based. ~~The request shall also state the names of all other person on whom it is served.~~

(4) ~~If more than one person requests a hearing on objections to the preliminary decree, may, in its discretion, hold a single hearing.~~ Upon expiration of the time for filing objections and upon receipt of a request for a hearing, the court shall notify each party named in or filing an objection to the preliminary decree that a hearing has been requested. The court shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The court shall then set a date for a hearing. The court may conduct individual or consolidated hearings. Each hearing shall be conducted as are other civil actions, but the parties to the hearing made by agreement and with the court's permission waive any of the procedural or evidentiary rules or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing."

Renumber: all subsequent sections

(91) Page 28, line 7.

Following: line 6

Insert: "Section 19. Section 85-2-208, M.C.A. is amended to read:

85-2-208. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis on any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree will automatically become final and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities ~~of the persons named in the petition~~ in the source or area under consideration

(2) The preliminary decree shall contain the information and make the determination, findings, and conclusions required for the final decree under 85-2-208.

(3) The district court shall send a copy of the preliminary decree to the department, and the department court shall serve by mail ~~or-by-personal-service~~ a copy notice of availability of the preliminary decree to each person named in the material submitted under 85-2-205 or named in the preliminary decree. ~~The department shall file a proof of service with the district court.~~ The clerk or persons designated by the court shall make a general certificate of mailing certify that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(4) A person named in the material or in the preliminary decree may purchase a copy of the preliminary decree upon payment of a fee of \$20, may inspect the data upon which the decree is based at any time and he may purchase copies of any of the data for the cost of reproduction."

Renumber: all subsequent sections

(90) Page 28, line 7.

Following: line 6.

Insert: "Section 18. Section 85-2-207, M.C.A. is amended to read:

85-2-207. Hearing on preliminary decree. (1) The department or a person named in the material filed under 85-2-205 or named in the preliminary decree or any other person, for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court and a copy served on the department by certified mail within 90 days after ~~receipt~~ notice of entry of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within 90 days after ~~receipt~~ notice of entry of the preliminary decree. ~~A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose right or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected as a result of the hearing.~~

of persons required by [section 1] to file a claim for an existing right and of persons required by order of the department or district court issued under sections 8 and 9 of chapter 452, Laws of 1973, to file a declaration of existing right.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post office address of the owner of the right;

(b) the amount of water, rate and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) ~~the approximate time during which the water is used each year~~ the inclusive dates which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right;

(5) The final decree in each existing right determination is final and conclusive evidence to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree."

Renumber: all subsequent sections

(92) Page 28, line 7.

Following: line 6

Insert: "Section 20. Section 85-2-209, M.C.A. is amended to read:

85-2-209. Appeals from final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as a result of a hearing~~7-at-which-he~~
~~appeared~~ requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Civil Procedure."
Renumber: all subsequent sections

(93) Page 29, line 20.
Following: "decree"
Insert: "if any"

(94) Page 30, lines 4 through 6.
Following: "right."
Strike: "A district court shall relinquish supervision of water supervision when a water court assumes responsibility for such supervision."

(95) Page 30, line 11.
Following: line 10
Strike: "district water"
Insert: "district"

(96) Page 30, lines 11 through 19.
Following: "relief."
Strike: "~~The department shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the source, in accordance with part 2 of this chapter. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding.~~"

Insert: "The department shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the source, in accordance with part 2 of this chapter. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding."

- (97) Page 30, line 19.
Following: ". The"
Strike: "~~district~~"
Insert: "district"
- (98) Page 30, line 22 through line 1 on page 31.
Following: "pending the"
Strike: "~~department's decision whether to determine existing rights in the source or the department's decision to intervene as a party, as the case may be, if the department does not proceed to obtain a determination of existing rights, the district court~~"
Insert: "department's decision whether to determine existing rights in the source or the department's decision to intervene as a party, as the case may be, if the department does not proceed to obtain a determination of existing rights, the district court"
- (99) Page 31, line 1.
Following: "~~court~~"
Insert: "may grant appropriate relief."
- (100) Page 31, lines 7 through 8.
Following: "court"
Strike: "~~which issued the final decree~~ for a county in which a diversion or place of use germane to the controversy is located"
Insert: "which issued the final decree"
- (101) Page 31, lines 22 through 25.
Strike: subsection (1) in its entirety
Re-number: all subsequent subsections
- (102) Page 32, line 1.
Following: "sections"
Strike: "12"
Insert: "1"
Following: "through"
Strike: "26"
Insert: "10"
- (103) Page 32, lines 9 through 10.
Strike: Section 41 in its entirety
Re-number: all subsequent sections
- (104) Page 32, lines 11 through 12.
Strike: section 42 in its entirety

4#12

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S PROPOSED
AMENDMENTS TO SENATE BILL NO. 76
AMENDMENTS TO INTRODUCED BILL

- (1) Page 3, line 9.
Following: "has"
Strike: "exclusive"
- (2) Page 3, line 23.
Following: "make rules"
Insert: "subject to ratification by the Montana Supreme Court"
- (3) Page 4, line 9.
Following: "proceeding"
Insert: "or pertinent portion thereof"
- (4) Page 7, line 2 through 3.
Following: line 1
Strike: subsection (6) in its entirety
- (6) Page 9, lines 18 through 19.
Following: "department"
Strike: "of natural resources and conservation"
- + (7) Page 9, line 19.
Following: "no"
Strike: "division"
Insert: "diversion"
- + (8) Page 9, line 22.
Following: "and"
Insert: "individual as opposed to municipal"
- (9) Page 9, line 24.
Following: "rights"
Insert: "in the Powder River Basin"
- (10) Page 9, line 25.
Following: "of"
Insert: "the department or"

- (11) Page 10, line 1.
Following: "1973,"
Strike: "as amended,"
- (12) Page 10, line 7.
Following: "shall"
Strike: "exclusively"
- (13) Page 11, line 9.
Following: "claimant"
Strike: "may"
Insert: "shall"
- (14) Page 11, line 10.
Following: "photographs"
Insert: "showing to scale the point of diversion, place of use,
place of storage, and other pertinent conveyance facilities,
and"
Following: "decrees"
Insert: "or pertinent portion thereof"
- (15) Page 11, lines 14 through 15.
Following: "[section 12]"
Strike: "establish a rebuttable presumption of abandonment"
Insert: "constitutes forfeiture"
- (16) Page 11, line 20.
Following: "Section 17."
Strike: "Notice of requirement"
Insert: "Order"
- (17) Page 11, line 21 through 22.
Following: ". The"
Strike: "department"
Insert: "Montana Supreme Court"
Following: "shall"
Strike: "provide notice of the requirement"
Insert: "on or before October 1, 1979 issue an order"
- (18) Page 11, line 24.
Following: "RIGHTS"
Strike: "NOTICE"
Insert: "ORDER"
- (19) Page 12, line 1.
Following: "IN"
Strike: "A REBUTTABLE PRESUMPTION THAT"
Insert: "FORFEITURE OF"
- (20) Page 12, line 2.
Following: "RIGHT"
Strike: "HAS BEEN ABANDONED"

- (21) Page 12, line 4.
Following: "This"
Strike: "is notice of commencement of procedures for"
Insert: "order is notice of"
- (22) Page 12, line 6.
Following: "certain"
Insert: "existing"
Following: "rights"
Insert: "to the use of water"
- (23) Page 12, line 13.
Following: "is"
Strike: "notified that"
Insert: "ordered to file"
- (24) Page 12, line 14.
Following: "right"
Strike: "is required to be filed"
- (25) Page 12, line 20.
Following: "department"
Insert: "in the Powder River basin"
- (26) Page 12, line 21.
Following: "of"
Insert: "the department or"
- (27) Page 12, line 23.
Following: "1973"
Strike: ", as amended, "
- (28) Page 13, line 2.
Following: "notice"
Insert: "of the order"
- (29) Page 13, lines 5 through 6.
Following: "the"
Strike: "department of natural resources and conservation"
Insert: "Montana Supreme Court"
- (30) Page 13, line 6.
Following: "notice"
Insert: "of the order"
- (31) Page 13, line 7.
Following: "cause"
Strike: "a notice"
Insert: "the order"
- (32) Page 13, line 11.
Following: "month of"
Strike: "July"
Insert: "October"

- (33) Page 13, line 13.
Following: "cause"
Strike: "a notice"
Insert: "the order"
- (34) Page 13, line 17.
Following: "of the"
Strike: "notice"
Insert: "order"
- (35) Page 13, line 19.
Following: "the"
Strike: "notice"
Insert: "order"
- (36) Page 13, line 24.
Following: "of the"
Strike: "notice"
Insert: "order"
- (37) Page 13, line 25.
Following: "section."
Insert: "The department shall be reimbursed for such costs
from the adjudication account created by [section 8]."
- (38) Page 14, line 1.
Following: "the"
Strike: "notice"
Insert: "order"
- (39) Page 14, line 4.
Following: "(5)"
Strike: "The water court"
Insert: "It"
- (40) Page 14, line 5.
Following: "notice"
Insert: "of the order"
- (41) Page 14, line 6.
Following: "section."
Insert: "(6) It may also in its discretion order that
the department or the water court assist the Supreme
Court in the carrying out of this section."
- (42) Page 14, line 7.
Following: "Section 8."
Strike: "Filing fee"
Insert: "Fees"
- (43) Page 14, line 9.
Following: "a"
Insert: "filing"

- (44) Page 14, line 11.
Following: "total"
Insert: "filing"
- (45) Page 14, line 13.
Following: "no"
Insert: "filing"
- (46) Page 14, line 16.
Following: "decree"
Insert: "or pertinent portions thereof,"
- (47) Page 14, lines 20 through 21.
Following: line 19
Strike: "All"
Insert: "The water court shall deposit all"
Following: "[sections 19 and 22]"
Strike: "shall be deposited"
- (48) Page 14, line 21.
Following: "incurred"
Insert: "by the courts and the department"
- (49) Page 14, lines 24 through 25.
Following: "(1)"
Strike: "The state of Montana upon relation of the attorney
general shall petition each water court to"
Insert: "The Montana Supreme Court shall"
- (50) Page 15, line 1.
Following: "right"
Strike: "within the water court district"
- (51) Page 15, line 3.
Following: "requirement"
Strike: "by the water court"
Following: "file"
Insert: "with the water court"
- (52) Page 15, lines 6 through 7.
Following: "water"
Strike: "which would be protected under the law as
it existed prior to July 1, 1973."
- (53) Page 15, line 8.
Following: "(3) The"
Insert: "Montana Supreme Court and the"
- (54) Page 15, line 11.
Following: "Section 21."
Strike: "Department assistance"
Insert: "Assistance"

- (55) Page 15, line 12.
Following: "court."
Insert: "(1)"
- (56) Page 15, line 14.
Following: line 13
Strike: "(1)"
Insert: "(a)"
- (57) Page 15, line 17.
Following: line 16
Strike: "(2)"
Insert: "(b)"
- (58) Page 15, line 20.
Following: line 19
Strike: "(3)"
Insert: "(c)"
- (59) Page 15, line 23.
Following: line 22
Strike: "(4)"
Insert: "(d)"
- (60) Page 15, line 24.
Following: "rights"
Insert: ", including all declarations filed with and all
information gathered by the department with respect to
existing rights in the Powder River basin.
(2) Upon request of the water court, each district
court so requested shall furnish a copy of each existing
water right decree within the district and all pertin-
ent information in the court's possession concerning the
decree to the water court"
- (61) Page 16, line 12.
Following: "person"
Strike: "named in the preliminary decree."
Insert: "who has filed a claim of existing right, or,
in the Powder River basin, to each person who has
filed a declaration of existing right. The water court
shall enclose with the notice an abstract of the dispo-
sition of such person's claimed or declared existing
right. The notice of availability shall also be served
upon those issued or having applied for a beneficial
water use permit pursuant to 85-2-301 MCA, those granted
a reservation pursuant to 85-2-316 MCA, or other inter-
ested persons who request service of the notice from
the water court."
- (62) Page 16, line 16.
Following: "party"
Strike: "in"
Insert: "required to be served with notice of"
- (63) Page 16, line 20.
Following: "\$20"
Insert: "plus the cost of printing"

- (64) Page 17, line 16.
Following: "upon"
Insert: "timely"
- (65) Page 18, line 9.
Following: "persons"
Strike: "who filed declarations"
Insert: "required to file a declaration of existing rights
in the Powder River basin"
- (66) Page 18, line 10.
Following: "of"
Insert: "the department or"
- (67) Page 19, line 7.
Following: "right."
Insert: "(5) The final decree shall indicate which district
court shall assume jurisdiction over which portion of
the decree."
- (68) Page 19, line 21.
Following: "to the department"
Insert: "and the appropriate district court"
- (69) Page 25, line 8.
Following: "declarations,"
Insert: "claims of existing right"
- (70) Page 25, line 10.
Following: "declaration,"
Insert: "claim of existing right"
- (71) Page 25, line 11.
Following: "chapter"
Insert: "not inconsistent with the requirements of this
chapter"
- (72) Page 29, line 6.
Following: "petition the"
Insert: "water court, if in existence, or if not, the"

D.W.C.

S. B. BILL NO. 76

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DETERMINATION OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 85-2-112, 85-2-201, 85-2-202, 85-2-203, 85-2-204, 85-2-205, 85-2-206, 85-2-207, 85-2-208, 85-2-209, AND 85-2-401, M.C.A."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Claim of existing water right--filing statement of claim required--exemptions. (1) A person claiming an existing right, unless exempted below, shall file with the department, no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) Claims for existing rights for livestock and domestic uses based upon instream flow or groundwater sources and claims for rights included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973 are exempt from the filing requirements of subsection (1) of this section. Such claims may, however, be voluntarily filed.

NEW SECTION. Section 2. Department of fish and game to represent public recreational uses. The department of fish and game shall represent the public for purposes of claiming and determining any prior and existing public recreational use in existing right determinations under part 2 of this chapter pro-

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vided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

NEW SECTION. Section 3. Statement of claim--contents.

(1) The statement of claim for each right shall include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water and times of use claimed;
- (d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;
- (e) the purpose of use, including, if for irrigation, the number of acres irrigated;
- (f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and
- (g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The claimant shall submit maps, plats, aerial photographs, showing to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities, and decrees or pertinent portions thereof, or other evidence in support of his claim.

NEW SECTION. Section 4. Abandonment by failure to file

Failure to file a claim of an existing right as
[Section 1] constitutes forfeiture of that right.
SECTION. Section 5. Claim to constitute prima facie
A claim of an existing right filed in accordance
[Section 1] constitutes prima facie proof of its content
issuance of a final decree.

SECTION. Section 6. Order to file claim. The Montana
Court shall, upon petition of the department, issue an
file a statement of a claim of an existing water right
initially the following form:

WATER RIGHTS ORDER

ARE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN
OF THE WATER RIGHT OR CLAIMED WATER RIGHT. (This
every sentence shall be printed in not less than 12-point
type.) This order is notice of the requirement to file
for certain existing rights to the use of water. Every
including but not limited to an individual, partnership,
on, public or private corporation, city or other munici-
pality, state agency or the state of Montana, and federal
the United States of America, asserting a claim to an
right to the use of water which would be protected under
it existed prior to July 1, 1973, is ordered to file
of claim to that right with the Montana department
resources and conservation no later than June 30,
ons for stock and domestic uses based upon instream
groundwater sources are exempt from this requirement;

however, claims for such uses may be voluntarily filed. Claims filed with the department in a declaration filed pursuant to the order of the department or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973 are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it.

NEW SECTION. Section 7. How notice of the order is to be given. To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana Supreme Court shall give notice of the order as follows:

(1) It shall cause the order printed in not less than 10-point type to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state during the month of October, 1979 and in April of 1980, 1981, 1982 and 1983.

(2) It shall cause the order in writing to be placed in a prominent and conspicuous location in each county courthouse in the state.

(3) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such

costs from the water right claim account created by [section 8, subsection (2)].

(4) It shall provide copies of the order in writing to the press services with offices located in Helena during July, 1979, and April of 1980, 1981, 1982, and 1983.

(5) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(6) It may order that the department assist the court in carrying out the court's duties under this section.

NEW SECTION. Section 8. Filing fee--special account created. (1) Each claim filed under [section 1] shall be accompanied by a fee in the amount of \$40, subject to the following exceptions:

(a) the total fees for all claims filed by one person may not exceed \$480; and

(b) no fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof.

(2) There is established a water right claim account in the earmarked revenue fund of the state treasury. All fees collected under [section 8] shall be deposited in the account to pay the expenses incurred for administering [this act].

NEW SECTION. Section 9. Filing of claims of existing right. (1) The Montana Supreme Court shall, on or before October 1, 1979, order all persons claiming an existing right

to the use of water to file a claim of the right as provided in [section 1].

NEW SECTION. Section 10. Department assistance to claimant. The department, shall, without cost to the claimant:

(1) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by [section 1];

(2) conduct field investigations of randomly selected claims or claims that the department determines warrant investigation.

(3) compile an abstract of the information contained in each claim of existing right, and provide for a copy of the abstract to be made available for public inspection in each county courthouse in the state.

NEW SECTION. Section 11. Overstating claim--misdemeanor. A person who in a statement of claim filed pursuant to [section 1 of this act] knowingly or purposely overstates a claimed right in any material respect is guilty of a misdemeanor.

Section 12. Section 85-2-112, MCA, is amended to read:

"Section 85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing right, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of existing rights and a public record of permits, certificates, declarations, claims of existing right, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations ~~with-the-department~~ or claims of existing right with the department under this chapter."

Section 13. Section 85-2-201 M.C.A. is amended to read:

"85-2-201. Determination of existing rights. (1) The department shall establish a centralized record system of ~~all~~ existing rights, and the department ~~shall-as-seen-as-practicable,~~ may, at its discretion, begin proceedings under part 2 of this chapter to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights- to be determined.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is ~~most~~ urgent and ~~first~~ begin proceedings under part 2 of this chapter to determine the existing rights in those areas or sources."

Section 14. Section 86-2-202 M.C.A. is amended to read:

"85-2-202. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include but is not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to July 1, 1973. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights.

(2) declarations of existing rights filed under 85-2-203;

(3) records of rights acquired under the groundwater code (Chapter 237, Laws of 1961, as amended);

(4) notices of appropriation filed under section 3, Chapter 345, Laws of 1969 and section 6, page 131, Laws of 1885, as amended;

(5) records of declarations filed under section 17, Chapter 35, Extraordinary Laws of 1933, and section 9, page 132, Laws of 1885, as amended;

(6) records of statements filed under 85-20-104;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes;

(9) claims of existing right filed under [section 1 of this act].

Section 15. Section 85-2-203 M.C.A. is amended to read:

"85-2-203. Declarations of existing rights. Unless the period for the filing of claims of existing right pursuant to [section 1] has commenced:

(1) the department shall, when it begins proceedings to determine existing rights in an area or source, obtain from the district court pursuant to 85-2-204 an order ~~pursuant to~~

85-2-204 requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within 1 year after the effective date of the order. The department shall publish notice of the order once a week for 4 consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

~~(2)--The department of fish and game may represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under part 2 of this chapter, provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 17, 1973, is or was a beneficial use.~~

~~(3)~~ (2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department.

The department shall make the forms available through its offices and the offices of the county clerk and recorders. The information required by the department may include but is not limited to the date of appropriation; the date the water was first applied to a beneficial use; the amount of water appropriated; the purpose of the appropriation; the place and means of diversion; the place of use; the time during which the water is diverted and used each year; and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

~~(4)~~ (3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt of the declaration by the department."

Section 16. Section 85-2-204 M.C.A is amended to read:

"85-2-204. Filing of petition. (1) Proceedings for the determination of existing rights shall be commenced by the department in the district court of the judicial district in which the source or area is located. The department shall request by petition and that the district court ~~shall-issue-an-order-requiring-each-person-claiming-an-existing-right-within-a-specified-area-or-from-a-specified-source-to-file-a-declaration-as-provided-in-85-2-203-~~ accept jurisdiction of the determination of existing rights within the area or from the source specified in the petition.

(2) If the source or a _____ judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within 30 days of receipt of notice, the judges of those district courts shall

agree on which district shall receive the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which it determines that the greatest number of existing rights are likely to be located."

Section 17. Section 85-2-205 is amended to read:

"85-2-205. ~~Contents-of-petition.-~~ Data filed with court.

(1) Within a reasonable time after gathering all data necessary under 85-2-202, the department shall file with the district court the names of all persons who have filed a ~~declarations~~ declaration under 85-2-203 and the names of all persons who have filed a claim of existing right under [section 1]. ~~and-other-persons-who-appear-from-the-data-gathered-by-the-department-to-have-existing-rights-to-the-use-of-waters-within-the-specified-area-or-from-the-specified-source-~~

(2) The department shall also file with the district court all data gathered under 85-2-202.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

Section 18. Section 85-2-206, M.C.A. is amended to read:

"85-2-206. Preliminary decree. (1) Within a reasonable time after the department files with the district court the material required by 85-2-205, the court shall issue a preliminary decree. The preliminary decree shall be based on the

data submitted by the department and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-208.

(3) The district court shall send a copy of the preliminary decree to the department, and the ~~department~~ court shall serve by mail ~~or-by-personal-service~~ a ~~copy~~ notice of availability of the preliminary decree to each person named in the material submitted under 85-2-205 or named in the preliminary decree. ~~The department shall file proof of service with the district court.~~ The clerk or person designated by the court to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(4) A person named in the material or in the preliminary decree may purchase a copy of the preliminary decree upon payment of a fee of \$20, may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data for the cost of reproduction."

Section 19. Section 85-2-207 M.C.A. is amended to read:

"85-2-207. Hearing on preliminary decree. (1) The department or a person named in the material filed under 85-2-205 or named in the preliminary decree or any other person, for good cause shown, who objects to the preliminary decree is entitled

to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court and a copy served on the department by certified mail within 90 days after ~~receipt~~ notice of entry of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within 90 days after ~~receipt~~ notice of entry of the preliminary decree. ~~A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.~~

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. ~~The request shall also state the names of all other persons on whom it is served.~~

(4) ~~If more than one person requests a hearing on objections to the preliminary decree, the court may, in its discretion, hold a single hearing.~~ Upon expiration of the time for filing objections and upon receipt of a request for a hearing, the court

shall notify each party named in or filing an objection to the preliminary decree that a hearing has been requested. The court shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The court shall then set a date for a hearing. The court may conduct individual or consolidated hearings. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may be agreement and with the court's permission waive any of the procedural or evidentiary rules or may submit only written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing."

Section 20. Section 85-2-208 M.C.A. is amended to read:

"85-2-208. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities ~~of the persons named in the petition~~ in the source or area under consideration of persons required by [section 1]

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to file a claim for an existing right and of persons required by order of the department or district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, to file a declaration of existing right.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, rate, and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) ~~the approximate time during which the water is used each year;~~ the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source

or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree."

Section 21. Section 85-2-209 M.C.A. is amended to read:

"85-2-209. Appeals from the final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as the result of a hearing, ~~at which he appeared~~, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure."

Section 22. Section 85-2-401, M.C.A. is amended to read:

"85-2-401. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to ~~85-2-201-through-86-2-210~~ part 2 of this chapter, any party to the controversy may petition the district court for relief. The department shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the source, in accordance with part 2 of this chapter. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the department's decision whether to determine existing rights in the source or the department's decision to intervene as a party, as the case may be. If the department does not proceed to obtain a determination of existing rights, the district court ~~shall settle only the controversy between the parties~~ may grant appropriate relief.

(3) A controversy between the appropriators from a source which has been the subject of a general determination of existing

(3) Priority of appropriation perfected before July 1, 1973, shall be determined as provided in ~~85-2-201-through-85-2-219~~ part 2 of this chapter."

Section 23. Section 85-2-405, M.C.A., is amended to read:

"85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court ~~which-determined-the-existing-rights-in-the~~ source for the county wherein the diversion or place of use of the appropriation in question is located to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court shall be appended to the final decree, if any. The department shall keep a copy of the determination in its office in Helena."

Section 24. Section 85-2-406, M.C.A. is amended to read:

rights under ~~85-2-201-through-85-2-210~~ part 2 of this chapter shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding."

Section 25. Codification. (1) Sections 1 through 11 are intended to be codified as an integral part of Title 85, chapter 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(2) If the provisions of this act are not codified as stated above, the code commissioner shall add to the M.C.A., if necessary, statutory language to convey the intent of this section.

-END-

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NAME Ronald F. Waterman BILL NO. SB76
ADDRESS P. O. Box 1686, Helena, MT 59601 DATE 012679
WHOM DO YOU REPRESENT Burlington Northern Inc.
SUPPORT XXX OPPOSE AMEND XXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

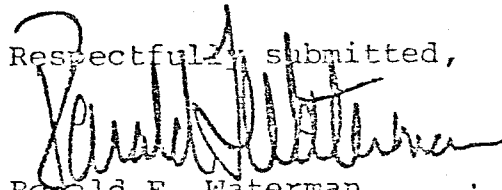
Comments:

We respectfully request that Senate Bill 76 be amended as follows:

Amend the introduced copy of the bill, page 14, line 18, by inserting a new subparagraph (c) to read as follows:

"(c) Each claim filed before July 1, 1981, shall be accompanied by a fee in the amount of \$20.00."

Respectfully submitted,



Ronald F. Waterman
Registered Lobbyist

6 This page is all the Law Library has - Check the Historical Society for the original.

NORTHERN PLAINS RESOURCE COUNCIL

Main Office
417 Stapleton Bldg
Billings, MT 59101
(406) 248-1154

Field Office
P.O. Box 886
Glendive, MT 59330
(406) 365-2525

January 26, 1979

SB 76 Water Adjudication

Mr. Chairman and members of the committee, my name is Pat Smith and I am testifying on behalf of the Northern Plains Resource Council. The NPRC is an organization of farmers, ranchers and other citizens primarily based in eastern Montana. In previous testimony before this committee, we expressed our support for SB 76, and today we again reiterate our support. We would, however, appreciate the committee's consideration of an amendment to the filing fee provision contained in Section 19 on page 14.

The filing fee, as proposed, favors the large water right holders in the state. For example, a landowner with 12 water rights in one of the water court districts would pay the same filing fee as as a landowner with 100 or 1200 water right claims. Thus a landowner with 120 or 1200 existing water rights in a water court district would pay only \$4 or 40¢, respectively, for each of their water rights. We feel a more equitable fee schedule is to charge everyone the same fee regardless of the number of water rights filed by one person.

A certificate of water right is an extremely valuable property right that will only increase in value in future years. It seems that the landowner with 100 water right filings values his water rights just as much as a landowner with 2 water right filings. It is only fair that both should be assessed the same filing fee per water right.

Again we appreciate the work the water sub-committee has done

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Rep. James Burnett

January 25, 1979

Basically where a Master is appointed, he takes evidence and makes findings of fact and conclusions of law. These are then referred to the District Judge, and ordinarily the District Judge pretty much accepts the findings of fact and conclusions of law.

The District Judges in the Four Regions anticipated to be set up, could be designated as the ones to do the appointment of the Water Adjudicator. This would pretty much avoid any politics in the appointment of the persons involved.

If the above would seem to interest you, and others working on this matter, I would be glad to go into more detail with regard to the same.

I frankly am not well versed enough on the basic merits of the Legislation, and consequently do not feel that I should indicate as favoring the legislation one way or the other. The above is simply a device that I think could be used if the Bill would meet with the approval by the Legislature.

Yours very truly,



CBS:rtr

DATE January 26

COMMITTEE ON Agriculture

SB 76

VISITORS' REGISTER

[illegible]

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

January 29, 1979

The eighth meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Galt at 12:30 p.m.

ROLL CALL: All members were present. Senator Hager arrived at 1:00. He had been testifying on another bill.

The witnesses that were present to give testimony are attached on the Visitor's Register.

Senator Galt stated that this meeting would be to consider proposed amendments to Senate Bill 76.

Senator Steve Brown presented proposed amendments to the committee, which are attached per exhibit #1. He said there is a constitutional problem with the district judges and the water judges. He felt someone would challenge the law in the constitution about the jurisdictional problem. He felt a constitutional amendment would be the way to solve the problem. It could be placed on the ballot in the primary election in 1980. He felt the Supreme Court could issue the rules until the constitutional amendment was passed. He said another problem in the bill was the disqualification of judges. The language in the bill conflicts with the Supreme Court ruling. He said an alternative to this would be to draft a joint resolution from the committee asking the Supreme Court to set up special rules of evidence and deal with disqualification provision. The Legislature could disapprove any rule they did not like in the next session. He also proposed the elimination of the special nominating commission and replace it with the existing nomination commission. He also expressed concern about the \$480 filing fee limitation. He felt it would delay the filing process. The DNR could catalogue the claims and as soon as the amendment to the constitution was passed they would pass the information on to the water judges.

Ted Doney, Department of Natural Resources, stated that he would explain their proposed amendments on Set #2(attached to the previous meeting) since the committee wanted to keep the water judges. He said he also felt there was a constitutional problem of whether we could set up water courts with exclusive jurisdiction. Their amendment would strike "exclusive". They also felt that the simple filing of the form for a water right would not be sufficient and wanted more information filed. They did not feel this would put additional burdens on the claimants. ~~Another concern they had was on the failure to file.~~ They felt if a person did not file his claim should be forfeited. He said water rights are property rights and property rights can be taken away with due process of the law. They also would propose to delay the effective date because the department

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would not have enough time to inform the public that they have to file. They also felt that everyone who files a claim even though they are not in the final decree should be notified. He said they were not in favor of a court adjudication process, because (1) they felt it would be impossible to do it through the courts, since no state has ever done it yet; (2) it would be too costly, especially to the claimants; (3) and that it was not necessary to have a court decree in most cases. Mr. Doney did not feel the Indians should be exempted.

Senator Boylan said that during the interim the committee had discussed the court system and felt it would be better because if it was done administratively decisions might be put off but a court would make a decision.

Rick Gordon, DNR, said the way the bill reads now, a municipality could take all the water they wanted and be exempt.

At this point Senator Aklestad moved the DNR's proposed amendments numbers 7 and 8 of their set or numbers 1 and 2 on attached committee report. Motion carried.

Gordon McGowan, Montana Railroads, said that his proposed amendment would be that the chief judge report back to the Legislature every two years.

Senator Conover presented a proposed amendment to the committee. See attachment #3. This amendment would be a declining fee schedule for the number of claims a person had. He thought the entire state should be under this. Senator Jergeson said he had helped draw up this amendment because of the numerous mining claims in the western part of the state. Senator Conover moved the amendment. Motion failed on a roll call of 4 to 4.

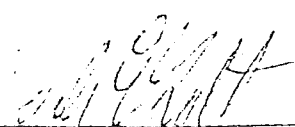
Senator Boylan said that the House Select Committee on Water has several attorneys on it and could address itself to some of the amendments that this committee does not accept. The committee felt it would be better to get the bill over to the House so they could have time to further study it.

Senator Aklestad brought out that stock water dams and dead water are included in this bill.

Senator Kolstad mentioned that all of the water judges would not have to be appointed right away.

DISPOSITION OF SENATE BILL 76: Senator Kolstad moved that Senate Bill 76 DO PASS AS AMENDED. Motion carried unanimously.

The meeting was then adjourned.



SENATOR JACK E. GALT, Chairman

Date 1-29

ROLL CALL

AGRICULTURE COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
SEN. KOLSTAD	✓		
SEN. AKLESTAD	✓		
SEN. BOYLAN	✓		
SEN. CONOVER	✓		
SEN. GRAHAM	✓		
SEN. HAGER	✓		11:00 ✓
SEN. NELSON	✓		
SEN. GALT, Chairman	✓		

Each Day Attach to Minutes.

SENATE COMMITTEE AGRICULTURE

Date 1-29 Senate Bill No. 76 Time 1:30

NAME	YES	NO
SEN. KOLSTAD		✓
SEN. AKLESTAD		✓
SEN. BOYLAN		✓
SEN. CONOVER	✓	
SEN. GRAHAM	✓	
SEN. HAGER	✓	
SEN. NELSON		✓
SEN. GALT, Chairman	✓	
	4	4

Sally Watson
Secretary

JACK E. GALT
Chairman

Motion: Sen. Conover moved his
amendments attached -

Motion Failed

(include enough information on motion—put with yellow copy of committee report.)

S. Brown

AMENDMENT TO REMOVE SPECIAL NOMINATING COMMISSION
AND TO REPLACE IT WITH EXISTING NOMINATION COMMISSION.

1. Page 7, line 14 through line 25 on page 8.
Strike: section 9 in its entirety
Renumber: all subsequent sections
2. Page 9, lines 2 through 6
Strike: all of lines 2 through 6
Insert: ". (1) The governor shall appoint persons to serve as water judges from nominees submitted by the judicial nomination commission as provided for in Title 3, chapter 1, part 10. For the purpose of nominating persons to serve as a water judge, a vacancy exists whenever a new water judge position is created, ~~or a water judge's term will expire within 60 days, or a water judge has resigned~~ or is otherwise unable to complete his term.
(2) Whenever the position of chief water judge is vacant, the nomination commission shall recommend one nominee or water judge to be assigned as chief water judge."

#1
PROCEDURAL CLARIFICATION

S. Brown

Proposal is to amend the bill to remove instructions concerning rules of procedure, evidence, and disqualification and instead submit a resolution addressed to the Supreme Court to consider these questions. The resolution would be a committee bill.

1. Page 3, line 22 through line 6 on page 4.
Strike: Section 5 in its entirety
Renumber: all subsequent sections
2. Page 4, line 7 through line 3 on page 7
Strike: Section 6 in its entirety
Renumber: all subsequent sections

Sen. Concurrence

SENATE BILL 76

New Section Section 19. Filing Fee -- Fee schedule -- special account created. (1) Each claim filed under [section 12] shall be accompanied by a fee except that no fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or verified as otherwise ordered by the court.

(2) Each claim filed under [section 12] shall be accompanied by a fee according to the following schedule:

(a) for 1 to 12 claims, a fee of \$40 per claim,

(b) for 13 to 24 claims, a fee of \$20 per claim in excess of 12,

(c) for 25 to 36 claims, a fee of \$10 per claim in excess of 24,

(d) for 37 or more claims, a fee of \$5 per claim in excess of 36.

(3) There is established a water right adjudication account in the earmarked revenue fund of the state treasury. All fees collected under [sections 19 and 22] shall be deposited in the account to pay the expenses incurred for administering [this act].

Illustration

Farmer A	12 claims	\$480
Farmer B	24 claims	\$720
Farmer C	36 claims	\$840
Farmer D	48 claims	\$900
Farmer E	100 claims	\$1,160

1-29

Agriculture

S.B. 76

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STANDING COMMITTEE REPORT

January 29 1979

MR. President

We, your committee on Agriculture, Livestock & Irrigation

having had under consideration Senate Bill No. 76

Respectfully report as follows: That Senate Bill No. 76 introduced bill, be amended as follows:

1. Page 9, line 19.

Following: "no"

Strike: "division"

Insert: "diversion"

2. Page 9, line 22.

Following: "and"

Insert: "individual as opposed to municipal"

3. Page 14.

Following: line 22

Insert: "Section 20. Expenses to be borne by state. All expenses encountered as a result of this act are to be paid from the earmarked revenue fund of the state treasury. Expenses shall include, but not be limited to, the salaries and expenses of personnel; equipment; office space; and other necessities of the water courts. If sufficient revenue is not available from the earmarked revenue fund, said expense shall be paid from the state's general fund."

DO PASS

Renumber: all subsequent sections

And, as so amended,

DO PASS

Helena, Mont.

SENATOR JACK E. GALT,

Chairman.

Approved by Committee
on Agriculture Livestock
& Irrigation

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,

GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF
EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101,
3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404, 85-2-102,
85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND
85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210,
MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Water courts established. (1)
To adjudicate existing water rights, a system of water
courts is established. A water court shall be presided over
by a water judge.

(2) There shall be one water judge for each water
court district. A water judge may sit in any district.

(3) The governor shall designate one water judge to
serve as chief water judge. The chief water judge may
distribute caseloads among the several water judges on an
equitable basis. The chief water judge shall be assigned to
a district and shall hear cases in that district on an

equitable basis with the other judges. The chief water
judge in consultation with the other water judges shall
determine the sites of the offices of the water courts.

NEW SECTION. Section 2. Water court districts
defined. (1) There are four water court districts whose
boundaries are formed by the natural divides between
drainages and the borders of the state of Montana and which
are described as follows:

(a) The Yellowstone River Basin water court district
consists of those areas drained by the Yellowstone and
Little Missouri Rivers and any remaining areas in Carter
County.

(b) The Lower Missouri River Basin water court
district consists of those areas drained by the Missouri
River from below the mouth of the Marias River and any
remaining areas in Glacier and Sheridan Counties.

(c) The Upper Missouri River Basin water court
district consists of those areas drained by the Missouri
River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water court district
consists of the areas drained by the Clark Fork River, the
Kootenai River and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water
court has jurisdiction over adjudication of an existing
right, the question shall be settled through consultation

*Please retain this copy. It will
not be run in blue unless necessary.*

1 with the water judges involved, subject to review by the
2 chief water judge.

3 NEW_SECTION Section 3. Salary, expenses, and
4 retirement of water judges. (1) A water judge is entitled to
5 the salary and expenses authorized by law for district
6 judges.

7 (2) A water judge shall participate in the Montana
8 judges' retirement system established in Title 19, chapter
9 5, on the same basis as a district court judge.

10 NEW_SECTION Section 4. Jurisdiction of the water
11 court. (1) A water court has exclusive jurisdiction in
12 matters arising in relation to the determination and
13 interpretation of existing water rights under [this act].
14 It is the intent of the legislature that all such matters be
15 brought in or immediately transferred to a water court
16 unless witnesses have been sworn and testimony has been
17 taken by the district court.

18 (2) The jurisdiction of the water court includes
19 jurisdiction to appoint and supervise water commissioners in
20 the same manner as authorized for district judges.

21 (3) The district court shall assume jurisdiction over
22 enforcement of the provisions of a final decree issued as
23 provided in [section 24 of this act].

24 NEW_SECTION Section 5. Procedure. (1) The water
25 court shall make rules, including rules of evidence,

1 necessary to accomplish the purposes of [this act].

2 (2) Except as may be specifically provided in this
3 section, procedures established in Title 25 applicable to
4 civil procedure in the district court apply to the water
5 court.

6 (3) The use of discovery in cases before the water
7 court may be exercised only to the extent specifically
8 authorized by order of the water court.

9 NEW_SECTION Section 6. Disqualification of water
10 judge. (1) A water judge may disqualify himself in any
11 proceeding in which his impartiality might reasonably be
12 questioned.

13 (2) A water judge may also disqualify himself in the
14 following circumstances:

15 (a) if he has a personal bias or prejudice concerning
16 a party or personal knowledge of disputed evidentiary facts
17 concerning the proceeding;

18 (b) if in private practice he served as a lawyer in
19 the matter in controversy or a lawyer with whom he
20 previously practiced law served during such association as a
21 lawyer concerning the matter or the judge or the lawyer has
22 been a material witness concerning it;

23 (c) if he has served in governmental employment and in
24 such capacity participated as counsel, adviser, or material
25 witness concerning the proceeding or expressed an opinion

1 concerning the merits of the particular case in controversy;

2 (d) if he knows that he, individually or as a
3 fiduciary, or his spouse or minor child residing in his
4 household has a financial interest in the subject matter in
5 controversy or in a party to the proceeding or any other
6 interest that could be substantially affected by the outcome
7 of the proceeding; or

8 (e) if he or his spouse or a person within the third
9 degree of relationship to either of them (as calculated
10 according to 72-11-101 through 72-11-105) or the spouse of
11 such a person:

12 (i) is a party to the proceeding or an officer,
13 director, or trustee of a party;

14 (ii) is known by the judge to have an interest that
15 could be substantially affected by the outcome of the
16 proceeding;

17 (iii) is to the judge's knowledge likely to be a
18 material witness in the proceeding.

19 (3) A water judge should inform himself about his
20 personal and fiduciary financial interests and make a
21 reasonable effort to inform himself about the personal
22 financial interests of his spouse and minor children
23 residing in his household.

24 (4) For the purposes of this section, the following
25 definitions apply:

1 (a) "Proceeding" includes prehearing, hearing,
2 appellate review, or other stages of adjudication.

3 (b) "Fiduciary" includes such relationships as
4 executor, administrator, trustee, or guardian.

5 (c) "Financial interest" means ownership of a legal or
6 equitable interest, however small, or a relationship as
7 director, adviser, or other active participant in the
8 affairs of a party, except that:

9 (i) ownership in a mutual or common investment fund
10 that holds securities is not a financial interest in such
11 securities unless the judge participates in the management
12 of the fund;

13 (ii) an office in an educational, religious,
14 charitable, fraternal, or civic organization is not a
15 financial interest in securities held by the organization;

16 (iii) the proprietary interest of a policyholder in a
17 mutual insurance company or a depositor in a mutual savings
18 association or a similar proprietary interest is a financial
19 interest in the organization only if the outcome of the
20 proceeding could substantially affect the value of the
21 interest; and

22 (iv) ownership of government securities is a financial
23 interest in the issuer only if the outcome of the proceeding
24 could substantially affect the value of the securities.

25 (5) A water judge may accept from the parties to the

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1 proceeding a waiver of any ground for disqualification if it
2 is preceded by a full disclosure on the record of the basis
3 for disqualification.

4 (6) The procedure for disqualification of a water
5 judge specified in this section is exclusive.

6 NEW SECTION. Section 7. Appeals from water court. The
7 supreme court has exclusive jurisdiction over appeals from a
8 water court. Appeal procedures shall be governed by the
9 Montana Rules of Appellate Civil Procedure.

10 NEW SECTION. Section 8. Qualifications of a water
11 judge. To be eligible to serve as a water judge, a person
12 must have the qualifications of a district court judge
13 required by Article VII, section 9, subsections (1) through
14 (3), of the constitution of Montana. A water judge shall
15 reside within the state.

16 NEW SECTION. Section 9. Creation, composition,
17 function, and termination of water judge nominating
18 commission. (1) A water judge nominating commission is
19 created. Its function is to provide the governor with
20 nominees for appointment as water judges. The commission
21 shall be composed of seven members appointed as follows:

22 (a) two members of the house of representatives
23 appointed by the speaker, not more than one of whom is from
24 the same political party;

25 (b) two members of the senate appointed by the

1 president, not more than one of whom is from the same
2 political party;

3 (c) one member appointed by the governor;

4 (d) one member appointed by the supreme court;

5 (e) one member appointed by the board of directors of
6 the state bar of Montana.

7 (2) Appointments shall be made [within 30 days of the
8 effective date of this section].

9 (3) In the event of a vacancy, the position shall be
10 filled as in the manner of the original appointment.

11 (4) The water judge nominating commission shall meet
12 as often as required to select the nominees. The
13 commission shall nominate three persons for the position of
14 chief water judge and five persons for positions as water
15 judges.

16 (5) The water judge nominating commission shall
17 organize itself and conduct its business under the
18 procedures provided for the nominating commission.

19 (6) Upon the acceptance of appointment by nominees as
20 water judges in each water court district, the water judge
21 nominating commission ceases to exist. Thereafter
22 nomination and appointment of water judges shall be as
23 provided for district court judge.

24 (7) Not later than July 1, 1979, the governor shall
25 appoint a chief water judge and three other water judges

1 from among lists of nominees presented by the water judge
2 nominating commission.

3 NEW_SECTION. Section 10. Appointment of water judges
4 to fill vacancy. (1) If a vacancy occurs, the governor shall
5 appoint a person to complete the unexpired term in the same
6 manner as provided for the appointment of a district judge.

7 (2) Appointments to subsequent terms shall be made in
8 the same manner as filling a vacancy.

9 NEW_SECTION. Section 11. Water judges -- term of
10 office. The term of office for water judges is from July 1,
11 1979, to June 30, 1985. After June 30, 1985, the term of
12 office of a water judge is 4 years, subject to continuation
13 of the water court system by the legislature.

14 NEW_SECTION. Section 12. Claim of existing water
15 right -- filing statement of claim required -- exemptions.
16 (1) A person claiming an existing right, unless exempted
17 below, shall file with the water court for the water court
18 district wherein the diversion occurs no later than June 30,
19 1983, a statement of claim for each water right asserted on
20 a form provided by the department of natural resources and
21 conservation. If there is a claimed right with no diversion
22 DIVERSION, the filing shall be made in the district where
23 the use occurs.

24 (2) Claims for existing rights for livestock and
25 INDIVIDUAL AS OPPOSED TO MUNICIPAL domestic uses based upon

1 instream flow or groundwater sources and claims for rights
2 included in a declaration filed pursuant to the order of a
3 district court issued under sections 8 and 9 of Chapter 452,
4 Laws of 1973, as amended, are exempt from the filing
5 requirements of subsection (1) of this section. Such claims
6 may, however, be voluntarily filed.

7 NEW_SECTION. Section 13. Department of fish and game
8 to represent public recreational uses. The department of
9 fish and game shall exclusively represent the public for
10 purposes of establishing any prior and existing public
11 recreational use in existing right determinations under
12 [sections 12 through 26], provided that the foregoing shall
13 not be construed in any manner as a legislative
14 determination of whether or not a recreational use sought to
15 be established prior to July 1, 1973, is or was a beneficial
16 use.

17 NEW_SECTION. Section 14. Statement of claim --
18 contents. (1) The statement of claim for each right shall
19 include substantially the following:

- 20 (a) the name and mailing address of the claimant;
- 21 (b) the name of the watercourse or water source from
22 which the right to divert or make use of water is claimed,
23 if available;
- 24 (c) the quantities of water and times of use claimed;
- 25 (d) the legal description, with reasonable certainty,

1 of the point or points of diversion and places of use of
2 waters;

3 (e) the purpose of use, including, if for irrigation,
4 the number of acres irrigated;

5 (f) the approximate dates of first putting water to
6 beneficial use for the various amounts and times claimed in
7 subsection (c); and

8 (g) the sworn statement that the claim set forth is
9 true and correct to the best of claimant's knowledge and
10 belief.

11 (2) The claimant may submit maps, plats, aerial
12 photographs, decrees, or other evidence in support of his
13 claim.

14 NEW SECTION. Section 15. Abandonment by failure to
15 file claim. The failure to file a claim of an existing right
16 as required by [section 12] establishes a rebuttable
17 presumption of abandonment of that right.

18 NEW SECTION. Section 16. Claim to constitute prima
19 facie evidence. A claim of an existing right filed in
20 accordance with [section 12] constitutes prima facie proof
21 of its content until the issuance of a final decree.

22 NEW SECTION. Section 17. Notice of requirement to
23 file claim. The department shall provide notice of the
24 requirement to file a statement of a claim of an existing
25 water right in substantially the following form:

WATER RIGHTS NOTICE

2 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
3 IN A REBUTTABLE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
4 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence
5 shall be printed in not less than 12-point boldface type.)
6 This is notice of commencement of procedures for the general
7 adjudication of existing rights to the use of water and of
8 the requirement to file a claim for certain rights. Every
9 person, including but not limited to an individual,
10 partnership, association, public or private corporation,
11 city or other municipality, county, state agency or the
12 state of Montana, and federal agency or the United States of
13 America, asserting a claim to an existing right to the use
14 of water which would be protected under the law as it
15 existed prior to July 1, 1973, is notified that a statement
16 of claim to that right is required to be filed with the
17 water court for the water court district wherein water is
18 diverted or used for the right claimed no later than June
19 30, 1983. Claims for stock and domestic uses based upon
20 instream flow or groundwater sources are exempt from this
21 requirement; however, claims for such uses may be
22 voluntarily filed. Claims filed with the department in a
23 declaration filed pursuant to the order of a district court
24 issued pursuant to sections 8 and 9 of Chapter 452, Laws of
25 1973, as amended, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it.

NEW SECTION. Section 18. How notice to be given. To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the department of natural resources and conservation shall give notice as follows:

(1) It shall cause a notice printed in not less than 10-point type to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state during the month of July, 1979, and in April of 1980, 1981, 1982, and 1983.

(2) It shall cause a notice in writing to be placed in a prominent and conspicuous location in each county courthouse in the state.

(3) It shall provide a sufficient number of copies of the notice to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the notice with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer

arising from the inclusion of the notice required by this section.

(4) It shall provide copies of the notice in writing to the press services with offices located in Helena during July, 1979, and April of 1980, 1981, 1982, and 1983.

(5) The water court may also in its discretion give notice in any other manner that will carry out the purposes of this section.

NEW SECTION. Section 19. Filing fee -- special account created. (1) Each claim filed under [section 12] shall be accompanied by a fee in the amount of \$40, subject to the following exceptions:

(a) the total fees for all claims filed by one person in any one water court district may not exceed \$480; and

(b) no fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or verified as otherwise ordered by the court.

(2) There is established a water right adjudication account in the earmarked revenue fund of the state treasury. All fees collected under [sections 19 and 22] shall be deposited in the account to pay the expenses incurred for administering [this act].

SECTION 20. -- THERE IS A NEW MCA SECTION THAT READS:

Expenses to be borne by state. All expenses encountered as a result of this act are to be paid from the earmarked revenue fund of the state treasury. Expenses shall include but not be limited to the salaries and expenses of personnel, equipment, office space, and other necessities of the water courts. If sufficient revenue is not available from the earmarked revenue fund, said expense shall be paid from the state's general fund.

NEW_SECTION. Section 21. Adjudication of existing rights. (1) The state of Montana upon relation of the attorney general shall petition each water court to require all persons claiming a right within the water court district to file a claim of the right as provided in [section 12].

(2) The requirement by the water court to file a claim for an existing right is the first step in proceedings for the general adjudication of all existing rights to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(3) The water court shall monitor the claim filing procedure and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.

NEW_SECTION. Section 22. Department assistance to water court. The department, subject to the direction of the water court, shall, without cost to the water court:

(1) provide such information and assistance as may be

required by the water court to adjudicate claims of existing rights;

(2) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by [section 12];

(3) conduct field investigations of randomly selected claims or claims that the water court determines warrant investigation; and

(4) provide the water courts with all information in its possession bearing upon existing rights.

NEW_SECTION. Section 23. Preliminary decree. (1) Within a reasonable time after June 30, 1983, the water court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted by the department and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under [section 24].

(3) The water court shall send a copy of the preliminary decree to the department, and the court shall serve by mail a notice of availability of the preliminary decree to each person named in the preliminary decree. The clerk or person designated by the court to mail the notice shall make a general certificate of mailing certifying that

a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party in the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(4) Any person may obtain a copy of the preliminary decree upon payment of a fee of \$20 to the water court.

NEW SECTION. Section 24. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, The department or such person is entitled to a hearing thereon before the water court.

(2) If a hearing is requested, such request must be filed with the water court within 90 days after notice of entry of the preliminary decree. The water court shall, for good cause shown, extend this time limit an additional 30 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon receipt of a request for a hearing, the court shall notify each party named in the preliminary decree that a hearing has been requested. The court shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The court shall then set a date for a hearing. The court may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions.

NEW SECTION. Section 25. Final decree. (1) The water court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities within the water court district of persons required by [section 12] to file a claim for an existing right and of persons who filed declarations pursuant to an order of a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are

1 based.

2 (4) For each person who is found to have an existing
3 right, the final decree shall state:

4 (a) the name and post-office address of the owner of
5 the right;

6 (b) the amount of water, rate, and volume, included in
7 the right;

8 (c) the date of priority of the right;

9 (d) the purpose for which the water included in the
10 right is used;

11 (e) the place of use and a description of the land, if
12 any, to which the right is appurtenant;

13 (f) the source of the water included in the right;

14 (g) the place and means of diversion;

15 (h) the inclusive dates during which the water is used
16 each year;

17 (i) any other information necessary to fully define
18 the nature and extent of the right.

19 NEW SECTION. Section 26. Appeals from final decree.

20 (1) A person whose existing rights and priorities are
21 determined in the final decree may appeal the determination
22 only if:

23 (a) he requested a hearing and appeared and entered
24 objections to the preliminary decree; or

25 (b) his rights as determined in the preliminary decree

1 were altered as the result of a hearing requested by another
2 person.

3 (2) An appeal from the final decree shall be taken as
4 provided by the Montana Rules of Appellate Civil Procedure.

5 NEW SECTION. Section 27. Certificate of water right.
6 When a final decree is entered, the court shall send a copy
7 to the department. The department shall on the basis of the
8 final decree issue a certificate of water right to each
9 person decreed an existing right. The original of the
10 certificate shall be sent to the county clerk and recorder
11 of the county where the point of diversion or place of use
12 is located for recordation. The department shall keep a
13 copy of the certificate in its office in Helena. After
14 recordation, the clerk and recorder shall send the
15 certificate to the person to whom the right is decreed.

16 Section 28. Section 3-1-101, MCA, is amended to read:

17 "3-1-101. The several courts of this state. The
18 following are courts of justice of this state:

19 (1) the court of impeachment, which is the senate;

20 (2) the supreme court;

21 (3) the district courts;

22 ~~(4) the water courts;~~

23 ~~(4)(5)~~ the justices' courts;

24 ~~(5)(6)~~ the city courts and such other inferior courts

25 as the legislature may establish in any incorporated city or

1 town."

2 Section 29. Section 3-1-102, MCA, is amended to read:

3 "3-1-102. Courts of record. The court of impeachment,
4 the supreme court, the district courts, ~~the water courts~~
5 and the municipal courts are courts of record."

6 Section 30. Section 3-1-1001, MCA, is amended to read:

7 "3-1-1001. Creation, composition, and function of
8 commission. A judicial nomination commission for the state
9 of Montana is created. Its function is to provide the
10 governor with a list of candidates for nomination to fill
11 any vacancy on the supreme court, or any district court, ~~or~~
12 ~~a water court~~ of the state of Montana. The commission shall
13 be composed of seven members as follows:

14 (1) four lay members who are neither judges nor
15 attorneys, active or retired, who reside in different
16 geographical areas of the state, and each of whom is
17 representative of a different industry, business, or
18 profession, whether actively so engaged or retired, who
19 shall be appointed by the governor;

20 (2) two attorneys actively engaged in the practice of
21 law, one from each congressional district, who shall be
22 appointed by the supreme court;

23 (3) one district judge elected by the district judges
24 under an elective procedure initiated and conducted by the
25 supreme court and certified to such election by the chief

1 justice of the supreme court. The election shall be
2 considered an appointment for the purposes of this part."

3 Section 31. Section 3-1-1010, MCA, is amended to read:

4 "3-1-1010. List submitted to governor. The commission
5 shall meet forthwith after a vacancy occurs on the supreme
6 court, or a district court, ~~or a water court~~ and submit to
7 the governor within 30 days from the date of the vacancy a
8 list of not less than three or more than five persons."

9 Section 32. Section 19-5-301, MCA, is amended to read:

10 "19-5-301. Membership. (1) A judge or justice who was
11 a member of the PERS prior to March 2, 1967, may elect to
12 remain under that system by notifying the public employees'
13 retirement board in writing of the election on or before
14 October 1, 1967.

15 (2) Every other judge of a district court, ~~water~~
16 ~~court~~ or justice of the supreme court must be a member of
17 the Montana judges' retirement system."

18 Section 33. Section 19-5-404, MCA, is amended to read:

19 "19-5-404. Contributions by the state. The state of
20 Montana shall contribute monthly to the fund a sum equal to
21 6% of the salary of each member. In addition, the clerk of
22 each district court shall transmit 60% of the fees collected
23 under 25-1-201 to the state, which shall first deposit in
24 the fund an amount equal to 20% of the salaries paid to
25 district judges, ~~water judges~~ and supreme court justices

1 who are covered by the judges' retirement system and then
2 deposit the balance in the state general fund. The clerk of
3 the supreme court shall pay one-fourth of the fees collected
4 under 3-2-403 to the public employees' retirement division
5 of the department of administration to be credited to the
6 fund."

7 Section 34. Section 85-2-102, MCA, is amended to read:

8 "85-2-102. Definitions. Unless the context requires
9 otherwise, in this chapter the following definitions apply:

10 (1) "Appropriate" means to divert, impound, or
11 withdraw (including by stock for stock water) a quantity of
12 water or, in the case of a public agency, to reserve water
13 in accordance with 85-2-316.

14 (2) "Beneficial use" means a use of water for the
15 benefit of the appropriator, other persons, or the public,
16 including but not limited to agricultural (including stock
17 water), domestic, fish and wildlife, industrial, irrigation,
18 mining, municipal, power, and recreational uses. A use of
19 water for slurry to export coal from Montana is not a
20 beneficial use. Slurry is a mixture of water and insoluble
21 matter.

22 (3) "Board" means the board of natural resources and
23 conservation provided for in 2-15-3302.

24 (4) "Certificate" means the a certificate of water
25 right issued by the department under ~~85-2-210~~ subsections

1 ~~{1}-and-{2}-of-85-2-306~~ and 85-2-315.

2 (5) "Declaration" means the decaration of an existing
3 right filed with the department under 85-2-203 section 81
4 Chapter 452, Laws of 1973.

5 (6) "Department" means the department of natural
6 resources and conservation provided for in Title 2, chapter
7 15, part 33.

8 (7) "Existing right" means a right to the use of water
9 which would be protected under the law as it existed prior
10 to July 1, 1973.

11 (8) "Groundwater" means any water beneath the land
12 surface or beneath the bed of a stream, lake, reservoir, or
13 other body of surface water, and which is not a part of that
14 surface water.

15 (9) "Permit" means the permit to appropriate issued by
16 the department under 85-2-301 through 85-2-303 and 85-2-306
17 through 85-2-314.

18 (10) "Person" means an individual, association,
19 partnership, corporation, state agency, political
20 subdivision, the United States or any agency thereof, or any
21 other entity.

22 (11) "Political subdivision" means any county,
23 incorporated city or town, public corporation, or district
24 created pursuant to state law or other public body of the
25 state empowered to appropriate water but not a private

1 corporation, association, or group.

2 (12) "Waste" means the unreasonable loss of water
3 through the design or negligent operation of an
4 appropriation or water distribution facility or the
5 application of water to anything but a beneficial use.

6 (13) "Water" means all water of the state, surface and
7 subsurface, regardless of its character or manner of
8 occurrence, including geothermal water and diffuse surface
9 water.

10 (14) "Well" means any artificial opening or excavation
11 in the ground, however made, by which groundwater is sought
12 or can be obtained or through which it flows under natural
13 pressures or is artificially withdrawn."

14 Section 35. Section 85-2-112, MCA, is amended to read:
15 "85-2-112. Department duties. The department shall:

16 (1) enforce and administer this chapter and rules
17 adopted by the board under 85-2-113;

18 (2) prescribe procedures, forms, and requirements for
19 applications, permits, certificates, declarations, and
20 proceedings under this chapter and prescribe the information
21 to be contained in any application, declaration, or other
22 document to be filed with the department under this chapter;

23 (3) establish and keep in its Helena office a
24 centralized record system of all existing rights and a
25 public record of permits, certificates, declarations, claims

1 of existing rights, applications, and other documents filed
2 in its office under this chapter;

3 (4) cooperate with, assist, advise, and coordinate
4 plans and activities with the federal, state, and local
5 agencies in matters relating to this chapter;

6 (5) upon request by any person, cooperate with,
7 assist, and advise that person in matters pertaining to
8 measuring water or filing declarations with the department
9 or claims of existing rights with a water court under this
10 chapter."

11 Section 36. Section 85-2-113, MCA, is amended to read:

12 "85-2-113. Board powers and duties. (1) The board may
13 prescribe fees or service charges for any public service
14 rendered by the department under this chapter, including
15 fees for the filing of applications or for the issuance of
16 permits and certificates. There shall be no fees for the
17 filing of declarations or for any action taken by the
18 department at the request of a water court or for the
19 issuance of certificates of existing rights.

20 (2) The board may adopt rules necessary to implement
21 and carry out the purposes and provisions of this chapter.
22 These rules may include but are not limited to rules to:

23 (a) govern the issuance and terms of interim permits
24 authorizing an applicant for a regular permit under this
25 chapter to begin appropriating water immediately, pending

final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 37. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation

as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference.

(2) The department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference."

Section 38. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his

1 water right under the changed conditions.

2 (2) Priority of appropriation made under this chapter
3 dates from the filing of an application for a permit with
4 the department, except as otherwise provided in 85-2-301
5 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

6 (3) Priority of appropriation perfected before July 1,
7 1973, shall be determined as provided in 85-2-201--through
8 85-2-210 part 2 of this chapter."

9 Section 39. Section 85-2-405, MCA, is amended to read:

10 "85-2-405. Procedure for declaring appropriation
11 rights abandoned. (1) When the department has reason to
12 believe that an appropriator may have abandoned his
13 appropriation right under 85-2-404 or when another
14 appropriator in the opinion of the department files a valid
15 claim that he has been or will be injured by the resumption
16 of use of an appropriation right alleged to have been
17 abandoned, the department shall petition the district court
18 ~~which--determined--the-existing-rights-in-the-source for the~~
19 ~~county wherein the diversion of place of use~~ of the
20 appropriation in question is located to hold a hearing to
21 determine whether the appropriation right has been
22 abandoned. Proceedings under this section shall be conducted
23 in accordance with the Montana Rules of Civil Procedure, and
24 appeal shall be taken in accordance with the Montana Rules
25 of Appellate Civil Procedure.

1 (2) At the hearing, the burden of proof shall be on
2 the department which must establish by a preponderance of
3 the evidence that the appropriation has been abandoned under
4 85-2-404.

5 (3) The determination of the court shall be appended
6 to the final decree. The department shall keep a copy of the
7 determination in its office in Helena."

8 Section 40. Section 85-2-406, MCA, is amended to read:

9 "85-2-406. ~~District--court--supervision~~ Supervisor of
10 water distribution. (1) The district courts shall supervise
11 the distribution of water among all appropriators. This
12 supervisory authority includes the supervision of all water
13 commissioners appointed prior or subsequent to July 1, 1973.
14 The supervision shall be governed by the principle that
15 first in time is first in right. A district court shall
16 relinquish supervision of water distribution when a water
17 court assumes responsibility for such supervision.

18 (2) When a water distribution controversy arises upon
19 a source of water in which existing rights have not been
20 determined according to 85-2-201-through-85-2-210 part 2 of
21 this chapter, any party to the controversy may petition the
22 ~~district water~~ court for relief. ~~The--department--shall--be~~
23 ~~served--with-process-in-any-proceeding-under-this-subsection~~
24 ~~and--shall--within-a-reasonable-time--thereafter--notify--the~~
25 ~~court--whether--it--intends--in--its--discretion--within--a~~

1 reasonable-time-to-begin-proceedings-to-determine--existing
 2 rights--in--the--source--in--accordance-with-part-2-of-this
 3 chapter--the-department-may--if--it--declines--to--commence
 4 proceedings--to--determine--existing--rights--in--the--source
 5 intervene-as-a-party-in-the-proceedings. The district court
 6 from which relief is sought may grant such injunctive or
 7 other relief which is necessary and appropriate to preserve
 8 property rights or the status quo pending the department's
 9 decision-whether-to-determine-existing-rights-in-the--source
 10 or-the-department's-decision-to-intervene-as-a-party--as-the
 11 case--may-be--if-the-department-does-not-proceed-to-obtain-a
 12 determination-of-existing-rights--the-district--court--shall
 13 settle--only-the-controversy-between-the-parties issuance of
 14 the final decree.

15 (3) A controversy between appropriators from a source
 16 which has been the subject of a general determination of
 17 existing rights under 85-2-201-through-85-2-210 part 2 of
 18 this chapter shall be settled by the district court which
 19 issued the final decree for a county in which a diversion or
 20 place of use germane to the controversy is located. The
 21 order of the district court settling the controversy may not
 22 alter the existing rights and priorities established in the
 23 final decree. In cases involving permits issued by the
 24 department, the court may not amend the respective rights
 25 established in the permits or alter any terms of the permits

1 unless the permits are inconsistent or interfere with rights
 2 and priorities established in the final decree. The order
 3 settling the controversy shall be appended to the final
 4 decree, and a copy shall be filed with the department. The
 5 department shall be served with process in any proceeding
 6 under this subsection, and the department may, in its
 7 discretion, intervene in the proceeding.*

8 Section 41. Codification. (1) Sections 1 through 9 and
 9 section 11 of this act are intended to be codified as an
 10 integral part of Title 3, and the provisions contained in
 11 Title 3 apply to this act.

12 (2) Sections 12 through 26 are intended to be codified
 13 as an integral part of Title 85, chapter 2, and the
 14 provisions contained in Title 85, chapter 2, apply to this
 15 act.

16 (3) If the provisions of this act are not codified as
 17 stated above, the code commissioner shall add to the MCA, if
 18 necessary, statutory language to convey the intent of this
 19 section.

20 Section 42. Repealer. Sections 85-2-201 through
 21 85-2-210, MCA, are repealed.

22 Section 43. Effective date. Sections 8, 9, and 10 of
 23 this act are effective upon passage and approval.

-End-

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,

GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-1-101, 3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404, 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405, AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Water courts established. (1)

To adjudicate existing water rights, a system of water courts is established. A water court shall be presided over by a water judge.

(2) There shall be one water judge for each water court district. A water judge may sit in any district.

(3) The governor shall designate one water judge to serve as chief water judge. The chief water judge may distribute caseloads among the several water judges on an equitable basis. The chief water judge shall be assigned to a district and shall hear cases in that district on an

equitable basis with the other judges. The chief water judge in consultation with the other water judges shall determine the sites of the offices of the water courts.

NEW SECTION. Section 2. Water court districts

defined. (1) There are four water court districts whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(a) The Yellowstone River Basin water court district consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(b) The Lower Missouri River Basin water court district consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(c) The Upper Missouri River Basin water court district consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water court district consists of the areas drained by the Clark Fork River, the Kootenai River and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water court has jurisdiction over adjudication of an existing right, the question shall be settled through consultation

There are no changes in SB 76, and due to length will not be rerun. Please refer to yellow copy for complete text.

1 with the water judges involved, subject to review by the
2 chief water judge.

3 **NEW_SECTION** Section 3. Salary, expenses, and
4 retirement of water judges. (1) A water judge is entitled to
5 the salary and expenses authorized by law for district
6 judges.

7 (2) A water judge shall participate in the Montana
8 judges' retirement system established in Title 19, chapter
9 5, on the same basis as a district court judge.

10 **NEW_SECTION** Section 4. Jurisdiction of the water
11 court. (1) A water court has exclusive jurisdiction in
12 matters arising in relation to the determination and
13 interpretation of existing water rights under [this act].
14 It is the intent of the legislature that all such matters be
15 brought in or immediately transferred to a water court
16 unless witnesses have been sworn and testimony has been
17 taken by the district court.

18 (2) The jurisdiction of the water court includes
19 jurisdiction to appoint and supervise water commissioners in
20 the same manner as authorized for district judges.

21 (3) The district court shall assume jurisdiction over
22 enforcement of the provisions of a final decree issued as
23 provided in [section 24 of this act].

24 **NEW_SECTION** Section 5. Procedure. (1) The water
25 court shall make rules, including rules of evidence,

1 necessary to accomplish the purposes of [this act].

2 (2) Except as may be specifically provided in this
3 section, procedures established in Title 25 applicable to
4 civil procedure in the district court apply to the water
5 court.

6 (3) The use of discovery in cases before the water
7 court may be exercised only to the extent specifically
8 authorized by order of the water court.

9 **NEW_SECTION** Section 6. Disqualification of water
10 judge. (1) A water judge may disqualify himself in any
11 proceeding in which his impartiality might reasonably be
12 questioned.

13 (2) A water judge may also disqualify himself in the
14 following circumstances:

15 (a) if he has a personal bias or prejudice concerning
16 a party or personal knowledge of disputed evidentiary facts
17 concerning the proceeding;

18 (b) if in private practice he served as a lawyer in
19 the matter in controversy or a lawyer with whom he
20 previously practiced law served during such association as a
21 lawyer concerning the matter or the judge or the lawyer has
22 been a material witness concerning it;

23 (c) if he has served in governmental employment and in
24 such capacity participated as counsel, adviser, or material
25 witness concerning the proceeding or expressed an opinion

HOUSE SELECT COMMITTEE ON WATER

January 31, 1979

The meeting was called to order by Chairman Day at 1:30 p.m. with all members present except Representatives Hand, Robbins, and Scully. The following people from the Department of Natural Resources and Conservation were present to explain to the committee where the Yellowstone River reservations were allocated: Ted J. Doney, Gary Fritz, Laurence Siroky, and Gary Spaeth.

TED DONEY began by stating that the Board of Natural Resources did an outstanding job on the final decisions on the Yellowstone River water reservations. He submitted a report from Dr. Wilson F. Clark, a member of the Board of Natural Resources and Conservation, on the Yellowstone River Water Reservations (attached) and a book entitled, "Order of Board of Natural Resources Establishing Water Reservations". This book is a full explanation of what the board did. (this book is in the possession of Representative Day)

The Department of Natural Resources and Conservation was handicapped in helping the board because they were unable to communicate with them because of the application the Department had made on the Tongue River for a water reservation. They will not make application ever again so they will be able to work with the board.

GARY FRITZ, explained that in 1973 the legislature passed the Water Use Act, pointing out four important items; 1) purpose of the reservation, 2) need for the reservation, 3) the public interest, and 4) the availability of water.

In 1974 the legislature passed the Yellowstone Moratorium. This was a three year moratorium, but was extended for 5 years. It was finally settled on December 15, 1978.

The applications amounted to more than water available on the river in a one year period. He then showed the committee some charts of how much water was applied for and how much was allocated.

The following cities were granted water under the municipal reservations: Livingston, Big Timber, Columbus, Laurel, Billings, Miles City, Glendive, and Broadus. The municipal reservations requested for a one year period was 391,516.9 acre-feet of water. The actual amount the board granted them was 60,913 acre-feet.

Several agencies requested water for irrigation purposes. The applications amounted to over 1 million acre-feet of water, 635 thousand acre feet were actually granted. These reservations total more water than the river has in low years. The priorities are as follows: 1) all municipal, 2) instream reservations at the mouth of the Bighorn River, 3) irrigation reservations, 4) instream reservations down stream from the mouth of the Bighorn River, and 5) all purpose storage reservations.

Charts were shown on the amounts of water granted and how much would be used for each area. The flows are granted by the month for irrigation purposes.

Minutes
January 31, 1979
Page 2

The instream reservations are held jointly with the Department of Fish and Game and the Department of Health.

There is 2 million acre-feet not reserved in an average flowing year.

TED DONEY, stated that the Departments recommendations were not the same as the Boards. They recommended more water not be reserved where the Board granted all of it. He made it clear that the Department of Natural Resources and the Board of Natural Resources are different. The Board is made up of seven members, and we are part of the Department.

The water reserved for irrigation purposes will have to be justified and reported to the board within the next three years. This will cost the irrigation districts about 455 thousand dollars.

REPRESENTATIVE RAMIREZ, stated that he felt the water committee should investigate and find out who would have the right to change the instream reservations.

The meeting was ajourned at 2:15 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary

January 6, 1979

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THE YELLOWSTONE RIVER WATER RESERVATIONS

--a summary and overview

MONT. DEPT. of NATURAL RESOURCES & CONSERVATION -by Dr. Wilson F. Clark, Member, State Board of Natural Resources and Conservation

The final decisions on the Yellowstone River Water Reservations were made by the State Board of Natural Resources on December 15. Since then, each applicant for a reservation has been informed of the specifics of its own reservation. But very few people outside the officials of the many applicant parties are aware of what those decisions were, of what they really amount to, or of why some applicants received all or a large part of their requests while others received much less, or were totally denied. This article endeavors to make those points clear, by means of the following tables and the discussions.

The Yellowstone River Moratorium went into effect in the Spring of 1974 as a result of the growing concern over large industrial filings for water. The law invited "public bodies" to lay out their long range water plans, and to apply for water reservations to meet their expectations of growth. The "public bodies" finally applying were eight cities, fourteen conservation districts, two irrigation districts, four State agencies, and two Federal agencies. Industrial users were not allowed to request reservations.

Applicants got a slow start for many reasons. The actual eight weeks of Hearings did not occur until the summer of 1977, and the final summary Hearing did not occur until the summer of 1978. The Board did not receive the full record until mid-September of 1978. Only then could the Board really start its deliberations. Because of several extensions of time granted by the Montana Supreme Court, the Board had until January 1, 1979 to complete the immense amount of work needed and to make its final decisions. It almost killed off the Board members, but they got the job done!

While all this was going on, much heat and little light were generated, for each applicant fiercely defended its own request and just as fiercely attacked the requests of some other applicants. Many absurd statements were made, and accepted as Gospel Truth, such as the statement that --"if all the applications were accepted the river would be dry, because the sum of all the applications was two and one-half times the average flow of the river." How silly those statements were is shown by the final results. The Board rather wistfully wishes that folks would not needlessly get themselves upset, irate, and polarized on the basis of such irresponsible statements, and it wishes that advocates would outgrow their tunnel vision. Despite all that, the laborious process was carried out, and the decisions were made.

In making their decisions, the Board Members were in general agreement on several critically important concepts and on the philosophy with which they approached the decisions. They are stated below:

(A) The Board Members felt that their ultimate responsibility was to the people of Montana in general and to those in The Yellowstone River Basin in particular. Such responsibility transcended the reservation requests of the many applicants, each of whom in presenting its case considered its reservation paramount. The Board endeavored to take a long-range overview, to

put the applications into perspective, and so far as possible, to reconcile the many often-conflicting and sometimes excessive water reservation requests.

(B) The Board Members were fully aware of the complexity of this case. From the outset, it was evident that the newness of the reservation concept, the stringency of the regulations, and the magnitude of the task of preparing applications all put a heavy burden on the applicants and on the Department of Natural Resources and Conservation charged with reviewing the applications. The Board viewed those difficulties with understanding and compassion, and did not take an ultra-legalistic stance.

(C) The Board Members were inclined to grant, in each case, the largest reservation that could be justified by the application, the record, the evidence and the available water supply. The decisions are not etched on stone, since the law requires a thorough review of the reservations at least once every ten years, at which time the Board may "modify" the reservation.

(D) The Board Members felt that every encouragement should be given to the development of off-stream storage with pumping from the Yellowstone River during high-water periods. They saw off-stream storage as the only way that the high-water flows can be made available for later release during low-flow periods to the benefit of all downstream users and instream reservations.

(E) The Board Members also felt that they have an obligation to foster, encourage and suggest conservation measures as applied to the use of water. The prodigal-use attitudes of the past are no longer tenable. Efficiency of water delivery and use, conservation in use, and a sense of personal responsibility all must be developed by each user. Only through such changes in attitudes leading to changes in habits and patterns of use will we leave a water legacy for future generations of Montanas.

In making decisions within this framework, the Board Members recognized that Montana is a state where economic activity and non-market values are both related largely to the use of natural resources -- especially water. This has produced a classic conflict between economic values and environmental values. The availability of water is central to the natural resources situation in most instances. The Board Members had the responsibility of achieving a balanced allocation of water in The Yellowstone River Basin to meet the needs of consumptive uses and instream reservations. The major problem was to insure realistic consideration of all the factors that should enter into the water reservations.

The final results of the Yellowstone Reservations case are given in the several tables, showing for each applicant the amount of water requested, the amount of the final reservation, and other important information. While detailed data tables do not make for snappy reading, they are the real summary, and only from such tables can a reader locate the particular item of concern to him. And the last two tables (Status of the Yellowstone before Reservations, and the Water Budget) then point out the condition of the river now, and the result of the reservation decisions.

Definitions

Before getting into the discussion of the reservation, it is necessary that the

most frequently-used terms be clear. Here they are:

(A) an acre-foot (abbreviated Af) of water is an amount of water that covers one acre to a depth of one foot. This amounts to 325,900 gallons.

(B) A cfs is a flow of water in cubic feet per second. A flow of 1 cfs continuously for a whole year amounts to 724 Af.

(C) The gallons per person per day figures (abbreviated gpd for gallons per capita day) are found by dividing total gallons in a year by 365 days and then by the population.

(D) River flows from year to year are compared by means of percentile (abbreviated % ile) of flows, using many years of stream gauging records. Percentile and percent are not at all the same -- in fact, they are sort of opposites. A 90% flow would mean a flow of 90% of the highest flows. But a 90% ile flow is the other end -- close to only 10% of the high flows -- and a 90% ile flow means that in 9 years out of 10 there would be more water than that flow. So the higher the % ile stated, the lower is the actual flow of the rivers.

City Reservations

Within the Yellowstone Basin are some 60 towns and cities. Only eight actually applied for reservations. Many are very small; many do not have central town water systems; many are on wells. For those, the reservation applications were not necessary. The Board members really worried, though, about some towns such as Sidney and Hardin that did not apply, but the Board could not consider them since they did not apply.

Of the eight reservations received, only Broadus was on wells. The rest depended on rivers. Of those seven river cities, each applicant estimated the population it would have by the year 2000 or beyond, then estimated the gpd needed (gallons per person per day) and finally came up with an acre-feet per year (Afy) value. What the cities did not seem to understand was this: the final reservation is for the water needed to meet the increase of use and population -- it is not for the total water to be used in that future year. Each reservation was finally determined in terms of total water needed in that future year minus the estimated present water use.

When the Board analyzed the applications, it came on some astonishing gpd values. For instance, Billings for year 2070 wanted 472 gpd, Big Timber for year 2000 wanted 1,334 gpd, and Miles City for year 2000 wanted 625 gpd. These figures were considered to be excessive, particularly since the average gpd for all cities in the Yellowstone Basin in 1970 was 212 gpd, while for Billings alone in 1975 it was 210 gpd, for Yellowstone County cities and towns in 1970 it was 198, for Custer County towns in 1970 was 210, and so on. After a great deal of discussion and calculating, the Board adopted a standard of 250 gpd, and applied it to all seven river-city applicants.

As for population estimates, the Board relied on a number of careful studies and projections. For three applicants (Big Timber, Columbus, Laurel) population projections were accepted or only slightly modified. For Livingston, Miles City, and Glendive

the population projections in the applications could not be supported, and some considerable modification was made in each. Those six just covered all applied for their reservations to either year 2000 or year 2007.

With Billings a different problem arose. Billings applied for the reservation for the year 2070, for a population of 600,000 people in the water service area. This was a tough one. The growth studies, the graphs, the data tables all seemed to have an adequate basis up to the year 2000 and a little beyond 2000. But then it seemed that the projection from there to the year 2070 was made only by drawing the graph in an ever steepening line. No one could or can prove that the Billings year 2070 projection is wrong, or right -- only time will tell. But the Board felt that the projection was on shakey ground, and it compromised by taking, from the evidence Billings itself supplied, the population of 206,000 (at 235 gcd) for the year 2010. The Board finally used a population of 206,000 at 250 gcd. The result was that Billings actually received a bit more than it asked for up to the year 2010.

These city reservations all have first priority in the basin. With that assurance, plus the reasonable final reservations, the Board feels that the cities are now in a water-rights position to vigorously pursue planning for their expected growth.

Irrigation Reservations

The table of Irrigation Reservations lists 14 Conservation Districts, two Irrigation Districts, three applications from the Department of State Lands, one from the Bureau of Land Management and one from the Bureau of Reclamation. The total of all the irrigation applications was for 1,176,559 Acre feet of water, to irrigate 443,711 new acres. The applicants were clear on the fact that the reservation was for new irrigation, and in no way affected, changed, covered, or reduced present irrigation water rights.

The basic problem in analyzing these reservations was in terms of whether or not water was actually available either in the rivers or in planned storage dams. Of the 21 applications, 10 received as reservations the full quantity requested, or very nearly that amount. Three upstream applicants stated that parts of their applications depended on developing considerable storage, but the applicants further stated that they had no plans to do so. For those, the Board accepted at full value the parts of the request that did not depend on storage. One applicant asked for over 124,000 Af for a large number of small units, but then stated that only three of those were likely to be developed, based on economic, engineering, and feasibility studies. The Board accepted those three. One large application on the Big Horn was denied because the applicant stated that water for that Hardin Bench was already reserved in Yellow-tail Reservoir. And one application (the Huntley I.D.) was requesting 6.8 acre-feet of water per acre -- a figure about three times the average of water per acre for all other full service irrigation applications. This one was denied for a number of reasons.

The real problems came on the Tongue and Powder Rivers. On the Tongue, after considerable study, the full service requests were met by the Board by granting the Department of Natural Resources its application for expansion of the storage capacity of the Tongue River Dam, and stating that the irrigation requests must be met by releasing water from the dam. On the Powder, the difficulty was that there was

no storage, and that the flows of the Powder are low and are heavy with dissolved salts. The 29 year average (or 50% ile) flow of the Powder was about 300,000 Af, while the low flow was only about 32,000 Af. Yet the irrigation requests on the Powder were for 24,300 Af for water-spreading and 166,896 Af for full service irrigation, for a total of 191,196 Af. The Board finally accepted all the water-spreading requests, and denied all the full-service requests on the Powder River.

So for the 21 irrigation requests, most of the applicants came out very well, except for the Hardin Bench and Huntley I.D. that were denied, for the three up-river CD's that would need storage but had not planned on any, and for the full-service irrigation requests on the Powder River.

Storage Requests

The table headed Storage Requests lists three proposed off-stream dams as approved by the Board, one from the Department of Natural Resources and one request from the Department of Natural Resources to considerably expand the storage capacity of the present Tongue River Dam. The Board granted all four of these. The off-stream dams were seen by the Board as the only long-range hope for supplying water downstream during low flow years of the future, if all the irrigation reservations are actually developed. The idea, as stated in the conditions the Board wrote, is to pump water into those dams in periods of high flow, so that it is available for later release. Since those three would be federal projects, there are many problems to be worked out, but at least the Board has done what it could to assure storage-water rights. As for the Tongue River Dam, the Department of Natural Resources says that the present dam is becoming unsafe. The price tag for making the present dam safe is only a little less than the price tag for redesigning and raising the dam to have about five and one-half times as much storage. The Board felt this enlarged dam was the answer not only for supplying the irrigation requests on the Tongue as well as assuring flows for fish and wildlife, but also for having some water available for industrial sales.

In-Stream Requests

There were 135 specific locations where in-stream requests were made -- 94 from the State Fish and Game Department, three from the State Department of Health and Environmental Sciences, and 38 from the Bureau of Land Management. The whole idea of in-stream reservations is quite new. The Board fully agreed with the legitimacy and necessity of assuring that adequate water remain in the streams to maintain fish, wildlife, health and recreational values. The problem was in balancing those requests against the equally legitimate requests for diversion of the water by cities and by irrigation applicants.

The Board met this problem in two ways:

(A) For the Yellowstone system above Billings, the Board felt that the instream values were of major importance, while below Billings the in-stream values were not as critical. To express this in legal form, the Board signed the final Orders in this sequence: (1) municipal reservations, (2) in-stream reservations above Billings, (3) all irrigation reservations, (4) in-stream reservations below Billings, and (5) all storage reservations.

(B) The Board assigned fairly generous in-stream reservations during the non-irrigation months, and considerably lower in-stream reservations during the five months of May through September, particularly for the system above Billings.

As a result of these two actions, the Board was able to meet the major requests for irrigation and at the same time meet to a surprising degree a major part of the instream requests. For instance, at Livingston the instream reservation is at 20% ile flows for October 1 through April 3, but only 95% ile flows for May 1 through September 30. The 95% ile in-stream flow means that in 95 years out of 100 years there will be more water than the in-stream flow value and no conflict with the irrigation reservations. So, even though in-stream water has priority over irrigation water near Livingston, a competitive situation would occur only 5 years out of 100 years, or possibly at worst only one year out of 10. Between Livingston and Billings the competition may occur 15 or possibly 20 years out of 100.

At Billings an in-stream reservation of 75% ile flow was granted. At Miles City and at Sidney, the in-stream reservations granted were for about 80% ile flows less the depletions up to those sites. In this lower reach of the river (below Billings) irrigation has a higher priority than in-stream. Even there the competition would occur at worst only two years out of 10.

Obviously there was duplication in the many in-stream requests. The Board, recognizing this, assigned reservations for duplicating requests as a single value for a specific site. Thus the reservation at Billings, Miles City, and Sidney serves both the Department of Fish and Game and the Department of Health, and on many smaller streams the Fish and Game and the Bureau of Land Management reservations overlap.

While the in-stream reservation at Sidney protects the river values for Montanans, it has another very significant effect, and that is to assure North Dakotans that at least 5.5 million acre feet will reach them. The often-heard cry of "use-it-or-lose-it" has been answered by the decision that in-stream water is now a "use", and yet this use does not deprive North Dakota of also being able to use the water that Montana has allocated for in-stream purposes. In addition, by making that much water available to down-stream states, there is not much likelihood of the downstream water filings eating into the still un-allocated and un-reserved water still in the river in seven years out of 10. And if that presently-unreserved water is filed on soon, it too would be protected.

The Water Budget

The "bottom line" of this whole process is to find out what all these reservations do to the river. To get at this the Board first needed to know the Status of the Yellowstone River Before Reservations. The table by that title tells the story. Those calculations allow for all present uses of the water. It shows that the river is in quite good condition down to Miles City. But it also shows that between Miles City and Sidney there is very little increase in flow even in the average (50% ile) year, and in the 90% ile and Low Flow years, there is actually less flow at Sidney than at Miles City now.

With those figures as a base, the Water Budget table was developed, for flow years of 50% ile down to Low Flow years. For each major segment of the river the depletion due to diversion uses were subtracted from the present flows, for each

of the percentile years. This gave what was left in the river. Then the in-stream reservation was subtracted, and the difference represents the amount of water not now used, and not reserved. This is the water to cover future filings. Since most irrigation and city requests have been met through at least the year 2000, that unreserved water probably represents the water base for future industrial filings and for other small diversion filings. The problem, however, is that the unreserved quantity of water disappears in lower flow years. It just isn't there. For instance, at Livingston in an 80% ile flow year there is almost no unreserved water; at Billings, it disappears in about a 65% ile flow year; at Miles City and at Sidney, there is no unreserved water when the river reaches 80% ile flow. What this means for possible industrial users is that while a lot of water is available to them in average flow years or above average flow years, they would have to create their own off-stream storage to cover their needs in low flow years, or else they would have to hold firm purchase contracts for water to be supplied from the Bureau of Reclamation off-stream storage projects or from the Tongue River Dam.

Indian Water Rights

The comment has been made that the State Board was wasting its time in making reservations, because the Indians' water claims are not yet settled. There are several facts which apply to that comment: (1) Indian reservations in the Yellowstone basin involve only the Big Horn, the Rosebud, and the Tongue Rivers. (2) Because of this, the Board's decisions on those rivers may well be in question, and certainly if a large part of the Big Horn water is finally judged to be Indian water, then heavy diversions below the Big Horn would be affected. (3) The Board was required to carry out the process and make final decisions by a certain time, and it did not have the option of waiting for the slow legal wheels to grind out the Indian water decision. (4) The decisions on water above the Big Horn are not involved in the Indian water claims. (5) That the decisions are made help to put the long-range plans of uses of the Yellowstone into perspective.

Because the Board made the decisions demanded of it by the law does not mean that the Board was unaware of the later impact the Indian Water Case might have. But the Indian Water Case was entirely outside the jurisdiction or influence of the Board. Consequently, the Board proceeded to discharge its obligations under the law.

Conclusion

The job of assigning water reservations is done. Now the monkey is on the applicants' backs, for the law states that all reservations will be reviewed at least once every ten years, and may be modified by the Board after that review. In order to spur action on the part of the applicants, the Board has directed each to report on progress within five years, with a few at three years. This does not mean that an applicant must be charging ahead and expanding beyond its means. But it does mean that applicants cannot let the reservation documents gather dust on a shelf. They must show significant progress in one or more areas such as planning engineering, or gathering more data than the sometimes sketchy data base of the application.

The Board has done its job to the best of its ability. Only the future will show whether or not it was a sound, statesmanlike job, and whether or not the people of Montana have risen to and sensibly answered the challenge of assuring that future generations of Montanans will have an adequate and healthy water base.

CITY REQUESTS, RESERVATIONS GRANTED, and TOTAL WATER												
City	Water Requested by Applicant				Estimated present Water Use Afy	Water Reservation Granted					Total Water Available (City)	
	Afy ⁽¹⁾	for year	For Population	gal/person/day ⁽²⁾		Afy ⁽¹⁾	for year	For Population	gal/person/day ⁽²⁾	Depletion ⁽³⁾	Present Use + Reservation	for year
Livingston	15,060.	2007	35-40,000.	384	1,930.	4,510.	2007	23,000.	250.	-1,085	6,440.	2007
Big Timber	4,483.	2000	3,000.	1,334.	477.	365.	2000	3,000.	250.	- 73.	842.	2000
Columbus	2,606	2007	4,500	516.	379.	883.	2007.	4,500.	250.	- 176.	1,262	2007
Laurel	16,830.	2007	35,000.	429.	1,249.	7,151.	2007	30,000.	250.	-1,430.	8,400.	2007
Bellings-Request- Data also in application and testimony.	317,456.	2070.	600,000.	472.	16,450.							
	58,218.	2010	106,000.	235.	"	41,229	2010.	206,000.	250.	- 8,245.	57,679.	2010
	43,440.	2000	165,000.	235	"							
Mt. City	21,720.	2000	31,000.	625.	2,721.	2,889.	2000	20,000.	250.	- 577.	5,610.	2000
Glendive	12,757.	2007.	38,800.	293.	1,768.	3,281.	2007	18,000.	250.	- 656.	5,049.	2007
Brookus (on wells)	605	1995	4,000.	135.	224.	605.	1995	4,000.	135.	not to River	829.	1995
Totals (Brookus not in totals because on wells.)	122,674.	Total with Bellings at year 2010			24,974.	60,308.					85,282.	
	390,912.	Total with Bellings at year 2070.										
Footnotes: (1) Afy means Acre Feet per year. 1 Af is 325,900 gallons. (2) gal/person/day (often abbreviated gpd for gallons/capita/day). Calculated from Total Gallons in a year ÷ Population ÷ 365 days = gpd. (3) Depletion refers to that part of the total water taken that does not return to the river system.												

IRRIGATION REQUESTS, AND RESERVATIONS GRANTED

Applicant	Requested Water			Reservation Granted		
	AF ⁽¹⁾	Acres	AF ⁽²⁾ Depletion	AF ⁽¹⁾	Acres	AF ⁽²⁾ Depletion
PARK C.D.	108,473	38,570	2.16; 65%	84,125	21,664	-41,674
SWEETWASS C.D.	55,822	19,510	3.02; 65%	46,245	15,313	-22,772
STILLWATER C.D.	16,755	5,290	3.17; 64%	16,755	5,290	-10,723
CARSON C.D.	47,557	21,015	2.26; 80%	22,674	10,034	-18,140
YELLOWSTONE C.D.	57,163	24,835	2.33; 84%	57,963	24,935	-48,688
TREASURE C.D.	19,478	7,645	2.61; 84%	18,361	7,035	-15,588
BIGHORN C.D.	21,200	9,645	2.23; 84.6%	20,185	9,175	-17,076
		* (3) From Tongue R. Dam →		1,034	470	- 374
Totals				21,219	9,645	-17,950
ROSESUD C.D.	94,129	37,360	2.52; 83.4%	87,003	34,525	-72,560
		from Tongue R. Dam →		7,144	2,935	-5,958
Totals				94,147	37,360	-78,518
NORTH OUSTER C.D. from Yell. R.	18,301	7,440	2.62; 69.7%	18,301	7,440	-12,755
from Tongue Dam	10,897	4,605	" "	10,897	4,605	- 7,595
from Powder R. (WS) ⁽⁴⁾ *	10,177	6,785	1.5; 50%	10,177	6,785	-5,088
from Powder R. (FS) ⁽⁵⁾ *	78,480	26,150	2.62; 69.7%	-- Denied --		
Totals	117,855	44,980		39,375	18,830	25,438
POWDER R. C.D. from Powder (WS)	13,680	9,120	1.5; 50%	13,680	9,120	-6,840
from Powder (FS)	75,560	25,245	2.60; 67.8%	-- Denied --		
Totals	89,240	34,365		13,680	9,120	-6,840
PRAIRIE C.D. from Yell. R.	68,024	22,241	3.04; 60.4%	68,024	22,241	-41,354
from Powder (WS)	443	295	1.5; 50%	443	295	- 222
Totals	68,467	22,536		68,467	22,536	-41,576
DAWSON C.D.	45,855	18,127	2.53; 77.6%	45,855	18,127	-35,533
RICHLAND C.D.	45,620	21,710	2.1; 84.5%	45,620	21,710	-38,548
LITTLE SEAVER C.D. (FS)	8,566	5,300	1.61; 74.7%	4,283	2,650	- 3,191
(WS)	12,000	8,000	1.5; 50%	6,000	4,000	-3,000
Stock Ponds	3,600	Storage; not in Totals		1,800	Storage; not in final	
Recreation Ponds	1,400	at bottom.		700	Totals.	
Totals	20,566	13,300		12,773	6,650	-6,191
HUNTLEY ID. * (7)	27,372	4,000	6.84; 74.7%	-- Denied --		
BUFFALO RAPIDS ID.	12,443	41,306	3.01; 74.7%	11,997	3,100	- 8,961
Dept. STATE LANDS (#9931) Yell. R. + Bighorn	12,858	4,286	3.0; 74.7%	12,858	4,286	- 9,604
from Tongue Dam	1,431	477	" "	1,431	477	-1,068
from Powder	7,140	2,380	" "	-- Application withdrawn --		
Totals	21,429	7,143		14,289	4,763	-10,672
Dept. STATE LANDS (#9933) from Yell. R.	25,889	9,236	2.30; 74.7%	25,889	9,236	-19,369
from Tongue Dam	390	130	3.0; 74.7%	390	130	- 291
from Powder R. (FS)	4,618	1,508	3.0; 74.7%	-- Denied --		
Totals	30,897	10,875		26,279	9,366	-19,660
Dept. STATE LANDS (#9914) from Powder	15,078	10,270	1.47; 50%	15,078	10,270	- 7,539
BUREAU OF LAND M. from Yell. R.	17,476	8,738	2.0; 74.7%	17,476	8,738	-13,054
from O'Fallon CK. (WS)	2,924	1,992	1.47; 50%	2,924	1,992	- 1,462
from Powder (FS)	1,078	549	2.0; 74.7%	-- Denied --		
Totals	21,478	11,279		20,400	10,730	-4,516
BUR. of RECLAMATION (Garden Beach)	131,700	42,950	3.06; 74.7%	-- Denied - already included in Yellowtail Dam. --		
GRAND TOTALS	1,176,559	443,711		652,809	266,378	-416,597
	AF	Acres		At	Acres	

* (1) WS = Water Spreading. * (2) FS = Full Service Irrigation.

* (3) Tongue R. Dam is covered by Dept. Nat. Resources storage application, and has a condition to supply the irrigation water stated.

* (4) Depletion - that part of the water taken that does not return to the rivers.

* (5) % Depletions above the * (5) as given by applicants. Below the * (5) used in 74.7%.

* (6) C.D. = Conservation Districts. * (7) ID = Irrigation Districts.

* (8) AF = Acre ft. Water per year. 1 Acre-foot of water = 325,900 gallons.

STORAGE REQUESTS, and RESERVATIONS GRANTED

BUREAU of RECLAMATION

Buffalo Creek Reservoir -- off-stream -- Yellowstone R: 68,700 Af. Requested, Granted

Cedar Ridge Reservoir -- off-stream -- Yellowstone R: 121,800 Af. " , "

Sunday Creek Reservoir -- off-stream -- Yellowstone R: 539,000 Af. " , "

Dept NATURAL RESOURCES and CONSERVATION

Increased Storage, Tongue River Dam on Tongue R: 383,000 Af. " , "

Total new storage ----- 1,112,500 Af.

IN-STREAM REQUESTS, and RESERVATIONS GRANTED

- Dept Fish and Game made 94 specific location requests
- Dept Health and Env. Sciences made only 3 specific location requests
- Bureau of Land Management made 38 specific location requests
- Many requests were at the same locations.
- The Reservations Granted cover all duplicate locations
- Only major Reservations are included in this list.

River and Location	Dept Fish & Game Request (Af)	Dept of Health Request (Af)	Single In-stream Reservation Granted
Yellowstone R. at Livingston	May 1, Aug: 935,007 Af full flows Sept to Apr 30		1,879,813. this is approx 95%ile * May 1 - Sept 30, and 20%ile Oct 1 - Apr 30.
Stillwater R. at mouth	438,827.		379,795. Approx 90%ile
Elbow R. at mouth	217,990.		195,163. Approx 90%ile
Clark's Fork (of Yell R) at mouth	504,020.		had no flow data. Gore 70%ile June-Sept, 90%ile other
Yellowstone R. at Billings	4,110,343.	2,994,815.	3,914,455. Approx 75%ile
Bighorn R. at mouth	2,484,187.		2,477,987. Approx 75%ile
Tongue R. at mouth	243,090.		54,289. Av. of 75%ile
Yellowstone R. at Miles City	7,876,889. Approx. 55%ile	4,448,000.	5,578,892. Approx 80%ile less Depletions thru Miles City
Powder R. at mouth	198,350.		95,201. Approx 90%ile
Yellowstone R. at Sidney	8,206,723.	6,466,000.	5,492,310. Approx 80%ile less Depletions to Sidney

* %ile = Percentile. It is NOT the same as Percent. A 90%ile flow means that 9 years out of 10 there would be MORE than that amount of water. So the higher the %ile, the LOWER the Flow. A 95%ile means that in all but 5 years out of 100 years there would be more water than that.

STATUS of YELLOWSTONE RIVER BEFORE RESERVATIONS

Summary: Yellowstone River Flows Now at 4 Gauging Stations, and Calculated inflow between stations Now
Data base: Exhibits, USGS Records of 39 years, 1936-1974. (all monthly values are means).

	50%ile flows		70%ile flows		80%ile flows		90%ile flows		Low flows	
	CFS	AF	CFS	AF	CFS	AF	CFS	AF	CFS	AF
<u>Section I - Gardner to Livingston</u>										
(1) - Livingston Flows (rnf)	3,508	2,539,819	2,985	2,161,180	2,742	1,985,392	2,449	1,773,668	1,909	1,392,557
<u>Section II - Livingston to Billings</u>										
(2) - Inflow, Livingston to Billings (Billings Flows minus Livingston Flows)		+2,353,310		+1,767,712		+1,537,875		+1,242,385		+749,966
(3) - Billings Flows	6,780	4,894,629	5,426	3,928,892	4,869	3,525,267	4,165	3,016,063	2,945	2,132,523
<u>Section III - Billings to Miles City</u>										
(4) - Inflow, Billings to Miles City (Miles City Flows minus Billings Flows)		+3,470,717		+2,861,453		+2,371,861		+1,875,312		+1,520,034
(5) - Miles City Flows	11,554	8,365,346	9,378	6,790,345	8,145	5,897,128	6,756	4,891,375	5,044	3,652,557
<u>Section IV - Miles City to Sidney</u>										
(6) - Inflow, Miles City to Sidney (Sidney Flows minus Miles City Flows)		+283,017		+224,914		+24,021		⊖ 52,371 *		⊖ 229,081 *
(7) - Sidney Flows	11,945	8,648,363	9,577	7,015,259	8,261	5,981,149	6,683	4,838,004	4,728	3,423,476

* the negative values here mean that even now, in 1974, under the present use patterns, there is less water at Sidney than at Miles City, at 90%ile and at Low Flow years.

WATER BUDGET: Yellowstone Basin, mainstem, Gardner to Sidney: Results of Reservations

(Data Base: USGS Flow Records: see next Table: Status of Yellowstone R. before Reservations.)

Aft = acre ft per year, cfs = cubic ft/sec. 1 cfs for 1 year = 724 Af.

Line #	Section	Item	How Calc.	Aft 50%ile Flow Year	cfs (100)	Aft 70%ile Flow Year	cfs (100)	Aft 80%ile Flow Year	cfs (100)	Aft 90%ile Flow Year	cfs (100)	Aft Mean Lowest Flow Year	cfs (100)
1.	I	Livingston Flows		2,557,312	2,508	2,161,139	2,085	1,785,312	2,742	1,773,663	2,447	1,382,557	1,307
2.		⊖ City Depletions		⊖ 1,085		⊖ 1,085		⊖ 1,085		⊖ 1,085		⊖ 1,085	
3.		⊖ Irrig. Depletions		⊖ 41,674		⊖ 41,674		⊖ 41,674		⊖ 41,674		⊖ 41,674	
4.		Livingston Flows ⊖ Depl.	1-2-3-4	2,497,940	3,448	2,118,401	2,725	1,442,613	2,683	1,730,889	2,370	1,339,778	1,850
5.		In-stream Reserv.		1,477,813	2,576	1,879,813	2,576	1,879,813	2,576	1,877,813	2,576	1,877,813	2,576
6.		Left Unreserved	4-5-6	617,227	1,521	238,538	329	52,800	87	-148,924	0	-542,035	0
7.	II	⊕ Inflow, Liv. to Blas.		⊕ 2,354,910		⊕ 2,167,712		⊕ 1,537,375		⊕ 1,742,375		⊕ 1,477,111	
8.		Available, Liv. to Blas.	4-7-8	4,351,850	6,701	3,886,113	5,327	3,482,488	4,810	2,773,234	4,106	2,089,744	2,886
9.		⊖ City Depl. this section		⊖ 9,924		⊖ 9,924		⊖ 9,924		⊖ 9,924		⊖ 9,924	
10.		⊖ Irrig. Depl. " "		⊖ 115,283		⊖ 115,283		⊖ 115,283		⊖ 115,283		⊖ 115,283	
11.		Billings Flows ⊖ Depl.	1-1-10-11	4,726,643	6,523	3,760,906	5,194	3,357,281	4,637	2,349,077	3,733	1,964,537	2,713
12.		In-Stream Resv.		3,914,455	5,406	3,914,455	5,406	3,914,455	5,406	3,914,455	5,406	3,914,455	5,406
13.		Left Unreserved	10-12-13	812,133	1,122	-153,549	0	-557,174	0	-1,066,378	0	-1,949,918	0
14.	III	⊕ Inflow, Blas. to M.C. City		⊕ 3,470,712		⊕ 2,861,453		⊕ 2,371,361		⊕ 1,875,312		⊕ 1,520,334	
15.		Available - Blas. to M.C. City	1-14-15	3,197,362	4,322	2,622,357	3,146	2,229,142	2,713	1,723,239	1,524	1,484,571	9812
16.		⊖ City Depletions		⊖ 577		⊖ 577		⊖ 577		⊖ 577		⊖ 577	
17.		⊖ Irrig. Depletions		⊖ 149,673		⊖ 149,673		⊖ 149,673		⊖ 149,673		⊖ 149,673	
18.		M.C. City Flows ⊖ Depl.	15-16-17	3,047,110	11,114	2,472,109	3,331	2,073,292	2,705	1,573,139	6,316	1,334,321	4,605
19.		In-stream Resv.		5,578,892	7,705	5,578,892	7,705	5,578,892	7,705	5,578,892	7,705	5,578,892	7,705
20.		Left Unreserved	18-19-20	2,458,218	3,409	993,217	1,234	0	0	-1,005,753	0	-2,544,571	0
21.	IV	⊕ Inflow, M.C. to Sidney		⊕ 223,017		⊕ 224,714		⊕ 84,021		⊕ 52,371		⊕ 222,081	
22.		Available, M.C. to Sidney	19-21	3,330,127	11,505	2,697,023	3,250	2,662,913	2,821	2,520,763	6,244	2,105,240	4,239
23.		⊖ City Depletions		⊖ 656		⊖ 656		⊖ 656		⊖ 656		⊖ 656	
24.		⊖ Irrig. Depletions		⊖ 169,947		⊖ 169,947		⊖ 169,947		⊖ 169,947		⊖ 169,947	
25.		Sidney Flows ⊖ Depl.	22-23	3,157,524	11,270	2,526,420	3,015	2,492,310	2,576	2,350,165	6,008	2,034,637	4,053
26.		In-stream Resv.		5,492,310	7,586	5,492,310	7,586	5,492,310	7,586	5,492,310	7,586	5,492,310	7,586
27.		Left Unreserved	25-26	2,667,214	3,684	1,534,110	1,428	0	0	-1,112,145	0	-2,557,673	0

W.F. 2/16/84

HOUSE SELECT COMMITTEE ON WATER

February 2, 1979

The meeting was called to order by Chairman Day at 12:35 p.m. with all members present except Representative Robbins. The purpose of the meeting today is to work with the Indian tribes on the water reservations.

REPRESENTATIVE SCULLY explained that this meeting would give the Indians an opportunity to explain their problems with their inclusion in Senate Bill No. 76, and we will work together as a whole to try and work a satisfactory agreement with them.

JIM SANAVER, Department of Interior, Washington D.C., stated that he had been asked to assist the Indian tribes with working out a solution to their problems. He presented the committee with a copy of a compact that the Indians were working out with the State of Utah on the water reservations in their state. This compact is now ready to be enacted. We hope to work something similar out with the State of Montana. (compact attached)

REPRESENTATIVE SCULLY stated that this is the kind of thing that we should work on. The question is the process that we should use to accomplish it. Should we draw up a compact or just what. We want to work out something that is agreeable to both parties.

REPRESENTATIVE KEMMIS asked if there are any existing compacts with other states? The reply was they had similar agreements but not actually compacts, as with Utah.

JIM SANAVER continued by stating that one of the most promising solutions is the proposed Tribal-State Compact Act introduced in the Senate of the United States last year, and is expected to be reintroduced this session. This proposed act does not alter current jurisdiction of federal, state, or tribal governments in Indian country, but does authorize tribes and states to enter into compacts or agreements which will provide for the application of civil, criminal and regulatory laws of either entity over Indians or non-Indians as the parties may see fit to agree. It is in this context that a Montana tribe or tribes hope to work toward mutually acceptable agreements with the State of Montana in the area of water rights. He then showed the committee a copy of the Tribal State Compact Act of 1978, hearing before the U.S. Senate Select Committee on Indian Affairs.

Since the mechanism for accomplishing an agreement or compact with the State of Montana requires Congressional, State, and Tribal action, we propose that the State of Montana exempt the water rights of Indian tribes from the proposed legislation dealing with water rights in the State for at least three years. During that time it is proposed that the State Legislature set up a mechanism for discussion and proposed solution of water rights and jurisdictional problems with those tribes in Montana who desire to enter into such discussions.

BILL MORIGEAU, Flathead Councilman, explained that they have 125 thousand

acres of land that they lease out and with this lease the water rights also go along. This will also have to be considered.

REPRESENTATIVE RAMIREZ asked if we make up something that the representatives here could take back to the tribes, what kind of a commitment will we receive? How will we know that if you are amended out of the bill that within the next two years some of your people may have second thoughts? Three years is a long time and we would like to know what kind of a commitment we have over this three year period? The reply was the same question back, what kind of a commitment would assure us that you would not take court action against us?

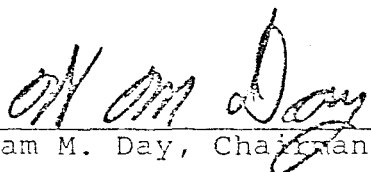
EARL OLDPERSON, Blackfeet Councilman, explained that the Indians that are in attendance today are tribal leaders. There are many other Indians involved and they will need to be consulted and informed of what we are doing. We will have to have time to meet with them and talk over the situation.

EVELYN STEVENSON, Flathead Reservation Attorney, explained that the Indians wanted to be excluded out of the bill at this time. We will continue to have sessions with the committee and work these things out. We have presented to you today suggested amendments to the bill and we would like you to consider them and come up with something for use to take back to our tribes for review. (materials attached)

REPRESENTATIVE RAMIREZ moved to proceed to work out some form of an agreement to present to the tribes within 10 days, to take back to their people.

The motion was discussed and a meeting date of Monday, February 19, 1979, was set to meet with the tribal leaders again.

The meeting was adjourned at 1:40 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary

MONTANA INTER-TRIBAL POLICY BOARD
316 North 26th Street
Billings, Mt. 59101

ATTENDANCE SHEET

Meeting w/
State Select Committee on Water
February 2, 1979
Helena, MT

PLEASE PRINT

Name	Tribe or Organization	Address
Earl Old Person	Blackfoot	Browning, Mont.
Tom Pablo	Flathead	Butte, MT
PETE T. LAMERE	CHIPPEWA CREE	Rocky Boy, Mt.
W. J. J. J.	Member Blackfoot-Tribal	Helena
Delmar W. Bigby	Fort Belknap	FT BELKNAP, MT 59526
JACK HAYES		DA. PO. BOX -
Tim M. M. M.	USDI - Wild Solietors Office	Box 1538, Billings, Mont 59103
Anson A. BAKER	Blackfoot Agency	Browning, Mt. 59417
Paul Engelman	Rocky Boy Tribe	Rocky Boy, Mont.
Mike Madison	Morrison-Markle Inc	Helena
Genevieve Gordon	Blackfoot	Missoula
Shirley M. M.	Blackfoot	Missoula
THE SKILLMAN	FLATHEAD	MISSOULA
Wm Ray Jensen	State Rep. Dist 25	St. Ignatius
ROBT A REEDER	INTAKE WATER CO	PO Box 401, Gladwin, MT
Audrey Roth	Representative Dist # 10	Big Sandy, Mont.
DENNIS NATHAN	Rep. Dist # 1	Redstone
William Joe Chairman	Tribe at 54	Helena
Daniel Kemmis	House District 94	Missoula
Will Hays	Member, Select Water Com	Helena 182

MONTANA INTER-TRIBAL POLICY BOARD
316 North 26th Street
Billings, Mt. 59101

ATTENDANCE SHEET:

Meeting w/
State Select Committee on Water
February 2, 1979
Helena, Montana

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[illegible]

*Montana Inter-Tribal Policy Board
316 North 26th Street
Billings, MT 59101*

MONTANA INTER-TRIBAL POLICY BOARD
316 North 26th Street
Billings, Mt. 59101

ATTENDANCE SHEET

SENATE BILL 76
January 26, 1979
HELENA, MT

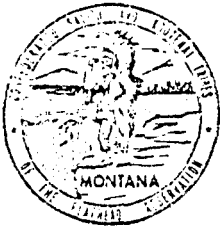
PLEASE PRINT

Name	Tribe or Organization	Address
BLACKFEET		
Earl Old Person	Tribal Council	Browning, MT
Bob Gervais	Tribal Council	Browning, MT
✓ Philip Roy	Blackfeet Tribal Council Attorney	Browning, MT
Anson Baker	BIA	Browning, MT
FLATHEAD		
✓ Tom Pablo	Tribal Chairman	Pablo, MT
Bill Morigeau	Tribal Councilman	Pablo, MT
Rich Acevedo	Tribal Member	Pablo, MT
FORT PECK		
✓ Caleb Shields	Tribal Councilman	Poplar, MT
Melvin Eagleman	Tribal Member	Poplar, MT
NORTHERN CHEYENNE		
Ruby Sooktis	Tribal Councilwoman	Lame Deer, MT
Wanda Small	Tribal Councilwoman	Lame Deer, MT
ROCKY BOY'S		
✓ Pete LaMere	Tribal Councilman	Box Elder, MT
Paul Eagleman	Tribal Councilman	Box Elder, MT
Jim Sansaver	Assist. to Assistant Secretary Indian Affairs	Washington, D.C.
Ted Merideth	Office of Field Solicitor	Billings, MT

ATTENDANCE SHEET

PLEASE PRINT

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THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

(406) 675 - 2700

Thomas Swaney, Chairman
Tom Pablo, Vice Chairman
Doug Allard, Secretary
Linda Lee Couture, Treasurer
Al Hewenkorn, Sergeant at Arms

Box 278
Pablo, Montana 59855

February 2, 1979

TRIBAL COUNCIL MEMBERS
Thomas Swaney
Joseph F. McDonald
Laurence Kenmille
Louis Adams
E.W. Morigeau
Sonny Morigeau
Thomas E. Pablo
Noel Pichette
Victor L. Singer
Fred Whitworth

STATEMENT ON PROPOSED SENATE BILL 76

The Confederated Salish & Kootenai Tribes of the Flathead Reservation hereby reconfirms the position presented to the State of Montana by the Inter-Tribal Policy Board on January 19, 1979 in opposition to proposed Senate Bill 76. It is the stand of the Flathead Tribes that the Montana legislative body be urged to amend Senate Bill 76 by including a new Section 4 which would read as follows:

"This Act shall not apply to any water rights owned by any Indian or Indian Tribe or reserved for the benefit of any Indian or Indian Tribe. The Indian right to the use of water is recognized as a separate, private right of Indian Tribes and Indian peoples which shall, therefore, be specifically excepted from all provisions of this Act."

LEGAL BASIS FOR EXCLUDING INDIANS FROM SB-76

1. Under the Hell Gate Treaty of 1855, 12 Stat. 975, the Confederated Salish & Kootenai Tribes reserved water rights which remain unaltered and which are superior to any other rights over water arising upon, flowing through or bordering said Reservation. A document of such magnitude cannot be summarily set aside.
2. The Organic Act of May 26, 1864, 13 Stat. 85, under which Montana was created as a territory honored Indian rights:

"Nothing in this Act shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory...unless extinguished by Treaty, or assent of the Tribes to the President, or other regulations made by the United States. All such territory shall be excepted out of the boundaries and constitute no part of the Territory of Montana."

3. Montana framed and adopted its Constitution pursuant to the federal Enabling Act

Act of February 22, 1889, 25 Stat. 676, which Act states in Section 4, part 2:

"That the people inhabiting said proposed states do agree and declare that they forever disclaim all rights and title... to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until title thereto shall have been extinguished by the United States, the same shall be and remain under the absolute jurisdiction and control of the congress of the United States...."

4. The Constitution of the State of Montana contains the same disclaimer clause in the same language as quoted above from the Enabling Act. When Montana revised its Constitution in 1972, the same disclaimer as to Indian rights was included verbatim in Ord. 1, 2. Section 7 of Ordinance 1 of the State Constitution further provides:

"That the ordinances in this article shall be irrevocable without the consent of the United States and the people of said state of Montana."

Therefore, we contend that the State legislative body cannot address Indian water rights without being in violation of its own State Constitution requiring prior referendum approval from the people of the State along with U. S. Congressional consent.

5. Further, it is pointed out that the Revised Codes of Montana (1947), §83-804, makes the following guarantee:

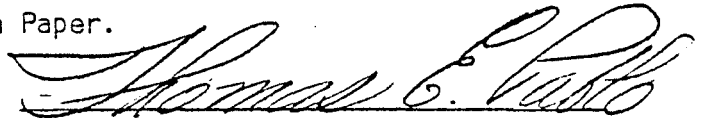
"83-804. Rights, privileges and immunities reserved to Indians. Nothing in this act shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band or community of any right, privilege or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, fishing or the control, licensing or regulation thereof."

[Emphasis added.]

CONCLUSION:

Based upon the above statutory legal considerations alone, the Tribes again urgently request that an amendment excluding Indian water rights from proposed Senate Bill 76 be adopted. The Act as written would constitute Treaty violations and would be in direct conflict with Federal and State statutes as well as a violation of the Montana Constitution. Indian water rights are unique and outside of State legislative acts.

Inclusion of Indian Tribes in the Bill at this time would necessitate immediate litigation; it would hinder State/Tribal joint efforts for arriving at workable solutions to other jurisdictional question; and it would directly infringe upon an established, pre-emptive federal trust relationship with Indians. Present discussions and proposed agreements for amicable solutions to questions regarding Indian reserved water rights will be jeopardized, as noted in the Inter-Tribal Policy Board Position Paper.

A handwritten signature in cursive script, reading "Thomas E. Pablo". The signature is written in dark ink and is positioned above the printed name and title.

THOMAS E. PABLO, Tribal Chairman

Confederated Salish & Kootenai Tribes
of the Flathead Reservation

Fit Peck

Undetermined Indian and Federal reserved water rights are causing controversies, spawning litigation and inhibiting the efficient use of scarce western water, according to the General Accounting office (GAO), the investigative arm of Congress.

Determining how much water should be reserved for a Tribe's future needs--especially as energy development starts gearing up --- is one of the controversial issues examined by GAO. States and private interests argue that such rights should not indefinitely remain dormant in undetermined quantities to meet undefined needs. Indian and Federal sources, however, contend that future water needs cannot be predicted with certainty and, therefore, should not be made.

Further, although many Indian Tribes do not know how much water they will need, some Tribes worry that quantification of their reserved water rights may impose limits on the extent of their water rights entitlement, which could preclude future reservation water claims.

Reserved water rights are those which were withheld from State appropriations when Indian reservations were created from lands withdrawn from the public domain. Since 1908 the courts have held that enough water must be reserved to satisfy the purposes for which the Indian reservations were established.

A key issue, is the Indian position that because the purpose of the Indian reservation is to provide an economic base for the Indian people residing there, it must follow that the Tribe's water right is a right to use the available reservation water for any beneficial use.

The Bureau of Indian Affairs (BIA) has difficulty controlling where water inventories are done and where and when Indian reserved water rights are adjudicated. The result of inadequate support-study development is that a Tribe's position cannot be effectively presented, and further, Tribes and the BIA are skeptical about whether the State courts have the expertise and impartiality needed to fairly decide on tribal water rights.

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It is unrealistic and unfair to expect Tribes to develop specific water claims now because many Indian reservations have neither adequately accessed full development potential nor realized actual development. If Tribes don't even know exactly how much coal they have, how much they want to mine, and how much water reclamation will require, how can Tribes decide how much water their "future needs" will require?

The General Accounting Office has reported that BIA has spent an estimated \$8 million inventorying Indian water claims, and --- at current funding levels--- would need at least 36 more years to finish the job.

2-1-79

CHAKED SHIELDS, TRIBAL COUNCILMAN
TRIBAL EXECUTIVE BOARD
ASSINIBOINE & SIOUX TRIBES
FORT PECK INDIAN RESERVATION
P.O. BOX 1027
POPLAR, MONTANA 59255

Congress is authorized to regulate commerce with foreign nations and with Indian tribes pursuant to Article I, Section 8, Clause 3, of the United States Constitution. This language was early interpreted by Congress as vesting exclusive authority in Congress to regulate affairs with Indian tribes, leaving no room for states to enforce their laws in Indian country. The first Indian Trade and Intercourse Act (Act of July 22, 1790, 1 Stat. 137) enforced this policy and still constitutes the lease premise of federal law governing the relationship of Indian tribes and state governments. The United States Supreme Court confirmed the Congressional interpretation in Worcester v. Georgia, 31 U.S. 515 (1832). Recent Supreme Court decisions have reaffirmed this basic premise. (Williams v. Lee, 358 U.S. 217 (1959); Kennerly v. District Court, 400 U.S. 423 (1970); McClanahan v. Arizona Tax Com'n., 411 U.S. 164 (1973); Bryan v. Itasca County, 426 U.S. 373 (1976); Fisher v. District Court, 424 U.S. 382 (1976)).

The two legal tests employed to determine if state jurisdiction can be sustained in Indian country are (1) whether the action "infringes" on the right of Indian people to be self-governing, and (2) whether the jurisdiction is precluded because of federal preemption. In addition, recent United States Supreme Court decisions have indicated that Indian tribes do not have criminal jurisdiction over non-Indians, but do have civil jurisdiction over non-Indians in certain areas.

With these and other areas of conflicting jurisdictional problems becoming more pressing in recent years, various attempts to mutually and amicably solve these problems have been explored.

One of the most promising solutions is the proposed Tribal-State Compact Act introduced in the Senate of the United States last year, and expected to be re-introduced this Session. This proposed Act does not alter current jurisdiction of federal, state or tribal governments in Indian country, but does authorize tribes and states to enter into compacts or agreements which will provide for the application of civil, criminal and regulatory laws of either entity over Indians or non-Indians as the parties may see fit to agree. It is in this context that a Montana tribe or tribes hope to work toward mutually acceptable agreements with the State of Montana in the area of water rights, and other problem areas. We realize that prolonged and protracted litigation

of problems that may be solved by good faith discussion on both sides is counter productive.

Since the mechanism for accomplishing an agreement or compact with the State of Montana requires Congressional, State and Tribal action, we propose that the State of Montana exempt the water rights of Indian tribes from the proposed legislation dealing with water rights in the State for at least three years. During that time, it is proposed that the State Legislature set up a mechanism for discussion and proposed solution of water rights and jurisdictional problems with those tribes in Montana who desire to enter into such discussions.

The creation of a Council of Governments or other body to work with Indian tribes on a regular and continuing basis would be met with a similar effort on the part of the Montana Indian tribes. This would assure a continuing effort on behalf of both parties to arrive at mutually acceptable solutions to our various problems.

Jurisdiction Project
Office of the Governor
State of Montana

INTRODUCTION

The State of Montana has seven large Indian reservations within its boundaries. Approximately one in twenty citizens of Montana is an Indian person. As in other states which have Indian reservations, numerous thorny jurisdictional questions have arisen. Frequently, the questions have existed for years without solution by either the tribes or the State of Montana. Most of the questions are extremely sensitive, and with all of them there is the very real potential for volatile controversy. Many of the questions have in the past few years been brought into the courts, primarily by way of litigation filed by the various tribes. The issues involve numerous state agencies, many of which do not possess the staff or the expertise to deal with the litigation.

The State of Montana has established a Jurisdiction Project whose sole purpose is to assist state agencies in dealing with the jurisdictional problems which have developed between the state and Montana Indian tribes. The Jurisdiction Project was funded by the Montana Legislature as part of the budget for the Office of the Governor. The Jurisdiction Project has been quite successful in seeking and finding practical solutions to the jurisdictional questions. At times, settling the issues requires litigation. At other times,

the Project's services consist of research and the preparation of oral or written memoranda for the use of the state agencies involved. Such memoranda are often useful in avoiding litigation.

POLICY COMMITTEE PROCESS

All policy matters and priorities of the Jurisdiction Project are determined by a three-person board. The present Policy Committee consists of a representative from the Governor's Office, the Attorney General's Office, and the Department of Revenue. Each of the persons on the Committee brings unique personal interests and talent to the Project. Each has had substantial contact with the jurisdictional questions which confront the State of Montana and its tribes. Moreover, the Committee members bring the concerns of their Offices and Departments to the attention of the Project and at the same time keep their Offices and Departments informed of the services offered by the Project and the work product of the Project.

STAFF

Persons working for the Project were required to be willing to assume a low profile in their dealings with state agencies and with persons outside of the state's employ. Also, some knowledge of Indian culture and experience in dealing with Indian persons were considered important. The Policy Committee sought persons who were both familiar with the law and able to deal effectively with persons involved in jurisdictional disputes.

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Two law interns from the University of Montana law school, two half-time attorneys, two full-time attorneys, and a legal secretary have been employed to carry out the work of the Project. All of the professional staff have extensive training in Indian law, several have lived on Indian reservations, and all have a deep personal interest in Indian law.

SUPERVISION AND COORDINATION

The Chief Administrative Officer of the Jurisdiction Project is a designated member of the Policy Committee. As Chief Administrative Officer, this individual oversees the day-to-day administration of the Project.

One of the part-time attorneys serves as the coordinator of the activities of the Jurisdiction Project in Missoula, where its research facilities are located, and is the primary contact between the Chief Administrative Officer and the staff.

MONTHLY POLICY COMMITTEE MEETINGS

The staff attorneys meet with the Policy Committee monthly. These meetings are extremely important to both the staff and the Committee members. Despite the press of other business, the Committee members make every effort to attend the monthly meetings, which are scheduled well ahead of time. Of course, the staff attorneys are required to attend the Committee meetings.

At the meetings, the Committee is informed about work progress, problems encountered, and new developments. For the staff, the meetings are a time to share the progress of the work assigned to them, present reports on finished assignments, call the attention of the Committee to new developments in case law or legislation and request assistance or guidance in policy matters. Often, Committee members bring proposed legislation and other new national and state developments to the attention of the staff. Committee members frequently bring new questions and problems for the staff to work on. Through the monthly meetings, the staff is better able to coordinate its efforts within the guidelines and basic policy established by the Committee. Moreover, the meetings have helped the staff and the Committee members establish a rapport which has proved invaluable to all.

Policy and Publicity

As described above, the very basic decisions about staff, offices, supervision and coordination, and day-to-day operations of the Jurisdiction Project have been made by the Policy Committee. The Committee has further determined that the focus of the Jurisdiction Project shall be to quietly, calmly and sensibly solve the Indian jurisdiction questions which exist in the State of Montana and which directly affect

both the agencies of the state and the state's citizens. The Policy Committee determines specifically which questions shall be addressed by the staff. In many instances, a state agency will request information or analysis by the Project. Often, the Policy Committee will direct the staff to study the question and report to the Committee.

After receiving the report, the Policy Committee will determine whether anything should be given to the state agency, and in what form it should be given. Often, the state agency is satisfied with an oral report given by one of the staff. All written reports made by the staff are evaluated by the Policy Committee and, if approved for dissemination, are supplied by Chief Administrative Officer to the state agency which makes a written request for the information. The Policy Committee sometimes imposes restrictions upon the agency's use of the materials and reports supplied to it by the Project. Sometimes, the Committee will require that the information supplied by the Project be disseminated by the agency only if the agency adopts the opinions and conclusions of the report. That is, a report may be disseminated by the agency only if the agency adopts the report as its own, rather than passing the report on to the public as the official report of the Jurisdiction Project.

The Policy Committee has publicized to the state agencies the availability of the Project's services, and has attempted to make the Project's services available to all of the agencies which make timely re-

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quests to the Project for assistance. Often, the agencies have hired their own private counsel who, at the last minute, frantically request assistance from the Project. Because the Project wishes to thoroughly research the questions presented to it, last minute requests made for the assistance of the Project are necessarily declined.

The Policy Committee has determined that all inquiries from the media shall be directed to the Chief Administrative Officer.

No member of the staff is permitted to discuss publicly the work of the Project, or to submit to interview by the press. Moreover, when the assistance of the Project is given to a state agency, it is requested that the agency refrain from making public comment about the issue being researched, or about the case which is pending, until the Jurisdiction Project has completed its work. This restriction on the publicity involving the Project's work is imposed on the staff because the Policy Committee believes that all publicity about the Project's work should be coordinated and cleared through it.

The Policy Committee, moreover, does not seek publicity about the Pro

ject's work. It is the belief of the Committee and of the staff that the Project's work is best accomplished without fanfare. Although information about the operation of the Project may be obtained through the Chief Administrative Officer, the Project's work is not permitted to be broadcast for the purposes of public acclaim or attack.

The Project's Work

The work of the Project during the short time it has been fully staffed has been extensive. The general, ongoing work of the Project is described below as well as a partial list of the questions and cases involving Indian jurisdiction on which the staff has worked. In order to realize the significance of the list, one should remember that in the area of Indian jurisdiction questions the legal research is extremely difficult. There are few answers to the questions and one must approach the problem with novel theories and diligent work in order to yield any results.

The Project has made an inventory of pending cases currently in court which include or affect the jurisdiction of the State of Montana vis a vis Indian Tribes. To our knowledge, this is the first inventory ever made of those cases. Only by having such an inventory may the Policy Committee determine which cases should be handled by the Jurisdiction Project, and which decisions should be appealed.

The Jurisdiction Project has obtained a number of relevant books concerning Indians, Indian law and history for use in the Project. An attempt was made to obtain books which were not available through the University of Montana School of Law Library or through the State Library System. Those books are maintained in the Jurisdiction Project Office. The Jurisdiction Project is continuing its study of bibliographies in order to locate other relevant materials.

Copies of all Montana Attorney General Opinions dealing with Indians were obtained and the opinions were indexed. Also, copies of significant cases with which the Project deals frequently were made. An index of those cases is being maintained in order to provide ready access for the attorneys using them.

The Project has continued its working relationship with various state agencies. Recently, the agencies have again been contacted in order to discover specific problems involving Indians with which the Jurisdiction Project might be of assistance. As is discussed below, the Project is currently involved in numerous cases and questions involving several of the state agencies.

The Project has conducted an extensive analysis of treaties and the legislative history affecting all of the tribes in Montana. The materials which are being provided by Historical Research Associates pur-

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suant to their contract with the Project are being studied by Project Staff.

Copies of major bills pending in the U.S. Congress pertaining to Indian jurisdiction questions have been obtained, so that inquiries about the legislation may be answered efficiently.

A substantial amount of work is being done on the Crow coal severance tax case, Crow Tribe of Indians, et. al. v. State of Montana, et. al., (CV 78-110-BLG) pending in the United States District Court in Billings which the Project is defending. The Project is preparing the answer to the complaint, and has filed the motions to dismiss and extensive supporting briefs. Additionally, the Project has filed the State's response to the motion to intervene filed by Westmoreland Resources, Inc. In an effort to coordinate the defense of this case, Project staff have met with the County Attorneys of Yellowstone, Big Horn, and Treasure Counties who are representing other defendants.

The Crow Tribe's presentation in the case of The Crow Tribe of Indians v. Andrus in the United States District Court in Billings, involving the validity of coal leases, was attended by a Project member. Analysis of that case is being done as a part of the defense of the Crow coal tax case.

The Project prepared an amicus curiae brief to be filed in the 10th Circuit Court of Appeals on behalf of the States of Montana, Wyoming, and North Dakota in the cases of Merrion, et. al. v. Jicarilla Apache Tribe, et. al., (CA No. 78-1154), and Amoco Production Company and Marathon Oil Company v. Jicarilla Apache Tribe, et. al., (CA No. 78-1251). Those cases from the U.S. District Court for New Mexico involve issues analogous to issues raised in the Crow coal tax case. The brief was filed on September 29, 1978.

All available publicity on Indians and tribal developments in Montana is being followed, with some articles clipped for Project files.

The Project has begun to prepare the appeal to the 9th Circuit Court of Appeals in Dillon, et. al. v. State of Montana, et. al., (CV No. 118, D. Mont., Billings Div.). The file has been read, and substantial research has been done in preparation for the filing of the briefs when they become due.

Members of the Project Staff have been monitoring the case of Confederated Salish and Kootenai Tribes, et. al. v. James H. Naman, et. al., (CV No. 2343, D. Mont., Missoula Div.) and related cases, which are being handled by privately retained counsel. The extensive file was read, and some research was done. The trial of the case was attended.

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Work is continuing on a question raised by the State Department of Lands involving the application of the Hard Rock Mining Act on the Flathead Indian Reservation.

Considerable work was done regarding the questions raised by the State Department of Administration on the enforcement of state building codes on non-Indian construction being done on Indian reservations. Pursuant to the request of the Department of Administration for assistance, a Project Attorney prepared a memorandum showing that the State does have jurisdiction to inspect such construction. That memorandum was supplied to the Justice of the Peace Court in Wolf Point. Apparently, the non-Indian contractor who claimed that he was not subject to inspection has acquiesced in the inspection. Because of the Project memorandum, further litigation was avoided.

In addition to the specific building code cases referred to above, extensive research has been done in preparation of possible litigation involving the enforcement of numerous administrative regulations of the state on the Indian reservations in Montana. In the event of litigation, the Project is prepared to provide assistance to the county attorneys involved.

In order to avoid litigation, however, members of the Project have been attempting to negotiate with representatives of the various Tribes to solve the problems without litigation. It is hoped that eventually the Project may negotiate memoranda of understanding between the Department of Administration and the Tribes permitting the Department of Administration to enforce its regulations on the Reservations.

A memorandum has been prepared summarizing the legal effect of H.R. 12533, "The Indian Child Welfare Act of 1978" on the State of Montana, together with possible legal deficiencies of the bill.

An extensive memorandum was prepared on the state's assumption of jurisdiction on the Flathead Indian Reservation pursuant to Public Law 280. Included in the memorandum was an analysis of whether the state has jurisdiction over Indians who are habitual traffic offenders.

An oral opinion was given in response to an inquiry about the jurisdiction of the state courts over an involuntary commitment of a resident of the Flathead Reservation in light of Tribal Ordinance 40-A

(Revised), White v. Califano, 437 F.Supp. 543 (1977) and Montana statutes on the "Treatment of the Seriously Mentally Ill."

Preliminary research has been done on the issue of whether the federated Salish and Kootenai Tribes have the authority to close Flathead River to motor boats.

Members of the Project staff argued the Boxer and LaRoque¹ cases before the Montana Supreme Court.

The case of The United States of America and the Crow Tribe of v. The State of Montana, et. al., CV 75-105-BLG involving the of the Big Horn River, was monitored by members of the Project. That case will be appealed to the 9th Circuit Court of Appeals with some assistance on the appeal given by Project members.

1. Boxer v. State of Montana, et. al., No. 12752; LaRoque v. State of Montana, et. al., Mont. Sup. Ct. No. 13993.

In the Three Irons² case a Project attorney is preparing the findings of fact and conclusions of law for the parties, in an effort to expedite the entry of judgment. An appeal in that case is expected and, if filed, the Project will prepare the briefs on appeal.

Conclusion

The work of the Jurisdiction Project has just begun. The future of the Jurisdiction Project rests in the hands of the Montana Legislature which in January 1979 will have to decide whether and at what level to fund the Project. Those closely associated with the Project strongly believe that it provides a vital service to the State. Indian law is a very complex and specialized area of law. It is unlikely, if not impossible, for every State agency to have Indian law experts to deal with the jurisdiction problems they face. As the Project assists more agencies, it is hoped they too will be in favor of refunding. Already, there is more coordination among the State agencies with regard to Indian jurisdiction questions than there has been for many years. In the months ahead, the Project should be of even more assistance to the agencies.

2. Three Irons v. Three Irons is consolidated with White Cloud v.

White Cloud. The cases are pending in the 13th Judicial District for the State of Montana. The Department of Revenue filed an amicus curiae brief in those cases which have been awaiting decision for

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JAN 12 1979

UINTAH & OURAY
AGENCY

UNITED STATES
DEPARTMENT OF THE INTERIOR
REGIONAL SOLICITOR'S OFFICE
Suite 6201 Federal Building
Salt Lake City, Utah 84133

To: Superintendent, U&O Agency
From: Regional Solicitor
Subject: Ute Indian Compact

For your information. Please pay particular attention to Articles on taxation and water. Changes have been made in both of these articles. We believe that the article on water is reasonably settled, but the article on taxation is not.

WILLIAM ROBERT MC CONKIE

HOUSE SELECT COMMITTEE ON WATER

February 7, 1979

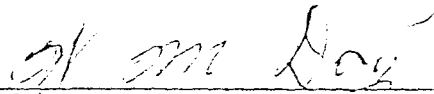
The meeting was called to order by Chairman Day at 1:25 p.m. with all members present except Representative Ramirez and Representative Hirshel Robbins.

The purpose of the meeting today was to discuss a response to the Indian tribes for water reservations on the Yellowstone River.

Chairman Day appointed the following Representatives to draft this response: Jack Ramirez, John Scully, and Dan Kemmis.

Chairman Day suggested the committee draft a committee bill to spell out that the Department of Natural Resources or the Board of Natural Resources have the authority to apportion the instream reservations on the Yellowstone and put them to use other than for instream flows. Scott Currey, Legislative Council, stated that there was a bill being drafted in the Senate that addressed this situation. Bob Lane, Staff Attorney, will check into this bill for the committee.

The meeting was adjourned at 1:35 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary

HOUSE SELECT COMMITTEE ON WATER

February 28, 1979

The meeting was called to order by Chairman Day at 12:30 p.m. with all members present except Representatives Hand, Nathe, Ramirez, and Hershel Robbins.

The purpose of the meeting today was to get input from the Indian tribes on their reaction to the proposed amendment to Senate Bill No. 76, to provide authority to enter into compacts with Indian tribes and the federal government concerning reserved water rights. (amendment attached)

These amendments were drafted by the subcommittee appointed by Chairman Day after the last Indian meeting. Members of that committee were: John Scully, Jack Ramirez, and Daniel Kemmis.

REPRESENTATIVE SCULLY began by explaining how they had arrived at the proposal. The proposed amendment would include all federal and Indian interests in the petition required in section 21 under authority granted the state by 43 U.S.C. 666. However, it is also intended that the state proceed under the provision of this section to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several federal interests and Indian tribes claiming reserved water rights within the state.

All activities to adjudicate federal and Indian water rights under this act are suspended for a period of three years while negotiations for the conclusion of a compact are being pursued. If three years are not enough time it could be suspended and more time given, but we feel this will get us going on it.

TOM WHITFORD, MITPB, stated that he had distributed the proposed amendment to all the Indian tribes prior to the meeting today. Five of the tribes were in attendance. We have not had enough time to go through the state's proposal. We have only had a few meetings. The feelings that we have received have not been good. This amendment still leaves the Indian tribes in the bill and after three years, if an agreement has not been made, we can still end up in court. We felt, in our proposal, that we were taking the interest of the state, but your proposal does not give us that same consideration. At this time I will let the tribal councilmen from the other tribes voice their opinions.

BOB GERVAIS, Blackfeet Tribe, stated that their meeting was not until tomorrow, at that time he would be able to present the proposal to the entire tribal council. He stated that he had spoken to some of the tribal council members but would not be able to speak for the council until after the meeting. From those that he had spoken to they did not like the proposal.

RANDY PEREZ, Fort Belknap Tribe, stated that their council meeting was not until March 5. "My feelings are that they will not like being included under the authority granted the state by 43 U.S.C. 666." At our council meeting we will discuss your proposal and send back a counter proposal.

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February 28, 1979
Page 2

RUBIE SOOKTIS, Northern Chyenne Tribe, stated that they had not had their tribal council meeting yet but would have it tomorrow. "We may have another amendment to propose, also."

PETE LAMERE, Chippewa Cree Tribe, stated that their tribal council meeting was tomorrow and they would consider the proposal at that time.

BILL MORIGEAU, Flathead Tribe, stated that they have meetings every two weeks. On Friday they will have another meeting. They have not discussed the amendments proposed fully, but will discuss them at the next meeting. "This is not something that you decide in one short meeting."

Their major source of income is timber. They have hundreds of streams that flow through this forest land. While cutting this timber they are very protective of these streams. "We feel that under Senate Bill No. 76 we would be protecting these streams for the state instead of for us."

"The cities lease water from us for their city water. In making water reservations it will have to work all ways."

CHAIRMAN DAY requested that the tribes send a written comment back to the committee with their proposal or reaction to the proposed amendment after they have their meetings. At this time Chairman Day had to leave and Representative Scully assumed the chair.

MR. WHITFORD stated that they have a water committee sent up of tribal members from the various tribes to work with the legislative committee and work out some form of a proposal. These members are working together to work out something that would be best for the tribes. "We have drafted an amendment that, as a group, we all agreed on."
(amendment attached)

EVELYN STEVENSON, Flathead Tribal Attorney, stated that the state proposed amendments do not exclude them from the bill. It gives them only three years to decide what they are going to do. "We thought, from our meetings here, that we would be taken out of the bill, and our tribal treaties would be honored. We are very disappointed in the state's proposal."

REPRESENTATIVE SCULLY stated that we have to have some mechanism to assure that, if you are not included in the bill, that you will continue to work on a compact. "We would like to have you in the bill, but exempt so a compact can be agreed upon during the interim."

TED MEREDITH, Field Sol., S.S.D.I., asked why they had to be included at this time. "We don't understand why we have to settle this session when there are many sessions yet to come."

REPRESENTATIVE SCULLY commented that Montana is so far behind in adjudication of their water that something has to be done before congress determines it unused water and allocates it to someone else. What good is it to reserve the water if we are letting it go down stream to be used by a more beneficial use. "We think it would be better to determine how much excess there is within the state instead of having the federal government decide for us under their water policies."

TED MEREDITH stated that they do not belong in this bill. "We don't know what we have anymore, what to do with it, or what we have a right to." All these problems will have to be worked out first.

JIM SANSAVER, Dept. of Interior, Washington, D.C., stated that the tribes and their trustees do not have any authority over the water. "If we are not excluded from the bill what assurance do we have that you will be interested in the compact? We were under the understanding that you would exclude us from the bill if we would agree to work on a compact during the interim. We were quite surprised with the proposal, leaving us in the bill."

The tribes do not always agree with the board of trustees. "I would be glad to work with Mr. Scully on a proposed amendment, but it would still have to be agreed on by the tribes before a final decision was made."

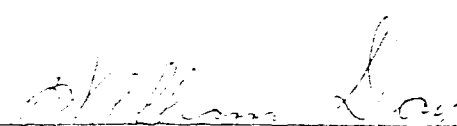
BOB GERVAIS stated that each tribe has a different interest. "In our case we are at the headwaters and we have most of our water studies complete, but other tribes do not."

After our meeting we will send a letter to the committee with our opinions on the two proposed amendments.

The next meeting with the Indian tribes will be on March 12, 1979 at 12:30 p.m.

REPRESENTATIVE SCULLY concluded by stating that we would try to come to a mutual agreement. "If Senate Bill No. 76 should fail I would try to suspend the rules and have an interim committee set up to work out some form of a compact with you, if you would agree to that."

The meeting was adjourned at 1:55 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary

D R A F T

PROPOSED AMENDMENT SENATE BILL 76

To provide authority to enter into compact with Indian Tribes and United States in their behalf concerning Water Rights.

New Section (Section 20) Legislature intent regarding Indian Reserved Water Rights compact--negotiation authorized--procedure.

1. It is the intent of legislature that in order to facilitate a compact process with the Indian Tribes and the United States in their behalf and in recognition of their special trust relationship, the Attorney General shall have discretion to limit the petition to the water courts as specified in section 20, to claimants on certain rivers, streams and tributaries and need not require all persons or entities to file a claim as therein provided, namely the Indian Tribes. However, it is further intended that the State of Montana proceed under the provisions of this section to conclude compact for the equitable division and apportionment and regulation of waters between the State and its people and the United States in behalf of the Indian Tribes claiming reserved Water Rights within the State during the three year period from the time hereinabove provided for filing the petition required in the (Section 20), and while negotiation for the conclusion of the compact under this Section are being pursued, all action to adjudicate Indian Water Rights under the act are suspended.
2. It is further provided, that in the event that a compact has not been finally concluded within the period provided in Section (1), but the negotiation processes are being pursued, a reasonable time will be granted for the conclusion of the said compact or compacts; provided further, that if for any reason, a compact cannot be concluded or an agreement reached between the State or the United States in behalf of Indian Tribes, then in that event a water adjudication action involving the Indian Tribes and the United States on their behalf to a reserved water right arising under Federal law or treaty, must be determined in a court of the United States with relation to the following, to-wit:

- (a) the existence of a reserved right to the use of water,
- (b) the priority date of such right,
- (c) the measure of such right,
- (d) the scope of such right,
- (e) the regulation of such right.

When such determinations become concluded, they shall be certified to and included within the decree of the appropriate state court.

3. The compact commission may negotiate with the United States in behalf of an Indian Tribe jointly or severally to conclude compact authorized under (sub-section 1). When the compact commission and authorized representatives of the United States and Indian Tribes have agreed to a compact, they shall sign a copy and file an original copy with the Attorney General of the United States of America and copies with Secretary of the State of Montana and if the compact is with an Indian Tribe with the Tribal Council Tribe involved. The compact is effective and binding upon all parties upon ratification by the Legislature of Montana, and effected Tribal Council, and the Congress of the United States. The Water Court shall include in the preliminary decree the contents a compact that has been agreed upon by the parties to the compact whether or not it has been ratified by Congress.

4. A. There is created a reserved Water Rights compact commission. Commissioners are as appointed as follows:

- I. Two members of the House of Representatives appointed by the Speaker each from a different political party;
- II. Two members of the Senate appointed by the President, each from a different political party;
- III. One member designated by the Governor;
- IV. One member designated by the Attorney General; and
- V. One member from the Department of Natural Resources and Conservation designated by the Director.

B. Legislative members of the commission are entitled to receive compensation expenses provided in 5-2-301 for each day actually spent on commission business. Members are entitled to salary and expenses as State employees.

C. The commission is attached to the Governors Office for administration purposes only. The cost of the commission shall be paid from funds appropriated for that pose from the Water Rights adjudication account established in (Section 19).

D. Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

Proposed amendment to SB 76 to provide authority to enter into compacts with Indian tribes and the federal government concerning reserved water rights.

"NEW SECTION. Section 22. Legislative intent regarding federal and Indian water rights -- compacts -- negotiation authorized -- procedure.

(1) It is the intent of the legislature that the attorney general include all federal and Indian interests in the petition required in [section 21] under authority granted the state by 43 U.S.C. 666. However, it is further intended that the State of Montana proceed under the provisions of this section to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several federal interests and Indian tribes claiming reserved water rights within the state. During the 3 year period from the time of filing the petition required in [section 21], and while negotiations for the conclusion of a compact under this section are being pursued, all actions to adjudicate federal and Indian water rights under [this act] are suspended.

(2) The compact commission may negotiate with the federal government and Indian tribes jointly or severally to conclude compacts authorized under subsection (1). When the compact commission and authorized representatives of the federal government or Indian tribes have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and if the compact is with an Indian tribe with the tribal council for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, and affected tribal council, and the Congress of the United States. The water court shall include in the preliminary decree the contents of a compact that has been agreed upon by the parties to the compact whether or not it has been ratified by Congress.

(3)(a) There is created a reserved water rights compact commission. Commissioners are appointed as follows:

(i) 2 members of the house of representatives appointed by the speaker, each from a different political party;

(ii) 2 members of the senate appointed by the president, each from a different political party;

(iii) 1 member designated by the governor;

(iv) 1 member designated by the attorney general; and

(v) 1 member from the department of natural resources and conservation designated by the director.

(b) Legislator members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(c) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in [section 19].

(d) Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

HOUSE SELECT COMMITTEE ON WATER

March 12, 1979

The meeting was called to order by Chairman Day at 12:40 p.m. with all members present except Representatives Curtiss and Hershel Robbins.

The purpose of our meeting today was to get the Indian tribes response to the State's proposed amendments to SB 76 and the amendments submitted by Jim Sansaver, Department of Interior. These amendments had been presented to them at our last meeting.

EVELYN STEVENSON, Flathead Tribe, stated that they had voiced their opinions at the last meeting. "We want out of the bill completely. We concur with the amendments drafted by Mr. Sansaver."

TOM WHITFORD, MITPB, Stated that he had talked to the tribal chairmen and most of them have written comments but some will voice their comments here today.

BOB GERVAIS, Blackfeet Tribe, stated that they had considered the amendments and the indication was that they were noncommittals. "We still feel that we should be left out of the bill."

REPRESENTATIVE SCULLY assumed the Chair. He asked what the tribes position was on Mr. Sansaver's proposal?

TOM WHITFORD stated that the reaction of the Blackfeet was to be taken out of SB 76 all together. "I think that our position is this because we are at the headwaters and that is why we can take this stand."

PAUL EAGLEMAN, Chippewa Cree Tribe, stated that they had a meeting with the tribal council and had given their report of the meetings with the legislature. They did not specifically meet with the council on the State's amendment but they are preparing a statement to Mr. Sansaver's amendments. "We did discuss and agree with the compact idea." They questioned if they really had the right to make an agreement with the State without the concurrence of Congress, for legal reasons.

WILLIAM BIG SPRING SR., East Glacier, representing himself, stated that he did not see eye to eye with the tribe on this issue. He referred to the 1907 agreement and two cases that were in court concerning water rights. He concluded by stating that he supported SB 76 because he felt it would end up in court anyway.

BILL MORIGEAU, Flathead Tribe, stated that at the tribal council meeting they moved to first request being excluded from SB 76. SB 76 does not recognize tribal rights. He stated that there is more water leaving Perma than entering because of all the mountain streams. "We have secretarial water rights that are issued by the Secretary of Interior."

"We have several irrigation projects. We also lease water sheds to the cities. You can understand that the water situation is quite complicated and we need more time for consideration."

He concluded by stating that if a person sells his land to someone else, under SB 76, they would have to go to the water judge court before they could get the water rights to that land.

REPRESENTATIVE SCULLY asked what part of the bill said that?

BILL MORIGEAU stated that the whole bill relates to that.

REPRESENTATIVE SCULLY stated that SB 76 was not intended to change the status of the water laws.

URBAN J. BEAR DONT WALK, Crow Tribe, stated that we have to understand the differences better before making a final decision. The tribes do not always agree with each other.

JIM SANSAVER, Department of Interior, stated that at the past meetings he was representing the Inter Tribal Policy Board but today he was representating the Department of Interior. He stated that they had some discussions with the executive branch and they are not going to do anything that would bring about a conflicting confrontation but would follow the compact concept. To be bond by a compact, we think that this would have to be done by an act of Congress. "We stand ready to work out any possible process to form a compact but will stand behind the tribes if forced into SB 76."

He stated that they have had water cases on record. By passage of this bill they will be put into state jurisdiction instead of federal jurisdiction.

PHILIP ROY, Blackfeet Tribe, stated that they have the right to be left out of the bill.

JIM SANSAVER stated that there may be federal dollars available for the Indians on water reservations.

REPRESENTATIVE SCULLY stated that we are going to have to meet on Friday to work on amendments to SB 76. "We will only have nine days after Friday to get this bill back to the Senate."

JIM SANSAVER requested that the committee consider the exclusion of the tribes this session.

PHILIP ROY stated that the Missouri River Basin is a water situation of its own and he thought they should work with the tribes in that basin. They can not be compared to other river basins.

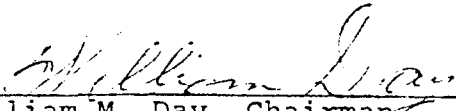
TED MEREDITH, USSI, stated during the interim we thought, if we were left out of the bill, that we could enter into a compact and the U.S. Congress could pass a law to allow Indian's to enter into such State compacts.

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REPRESENTATIVE ROTH asked if the Indian's had any other amendments?

EVELYN STEVENSON stated that they were under the understanding that Mr. Sansaver and Mr. Scully would work together. "We hope that the two of you can work out an amendment with good language."

The meeting was adjourned at 2:10 p.m.



William M. Day, Chairman

Judy J. Mook, Secretary

Select Committee on Water
March 29, 1979
46th Legislative Session

A meeting of the House Select Committee on Water was held Thursday, March 29, at 9:00 a.m. in room 437. Chairman Day called the meeting to order and the secretary took roll. All members were present except Rep. Robbins who was absent.

The meeting was opened to executive discussion on SB 76. Chairman Day said that he would allow anyone to submit any amendments to the bill at this time. There were none. He also said that it would be permissible for the committee to ask questions from the witnesses present at the meeting.

Rep. Ramirez said that he and Rep. Scully had worked up some amendments that they would like to propose to the committee. He said that they had not had a chance to write them up so the committee could have copies but he would explain them to the committee at this time. Rep. Ramirez said that he had great concerns that we are creating situations with the water courts that might give us problems down the line. First, he said, we are getting involved in judicial disputes, adjudication of Indian claims, when we do not know the extent of the Indian rights. Also, he stated, there is a constitutional question as to whether we can vest this jurisdiction in water courts. He said there are many reasons why we should take another approach. The main change that would be made in the bill would be the postponing of the water courts. We would keep our four year filing period as in SB 76. Claims would be filed with the Dept. of Natural Resources. Everyone would be subject to this filing. He said this would mean a four year moratorium. About one or two years before the filing period was up we would create water districts using our present water courts. The senior judge would appoint a master to the district. The remainder of SB 76 would be adopted. He said this would eliminate water judges sitting around for 4 years. We won't need any appropriation or very little. He said this would enable us to negotiate with the tribes and get these issues resolved before the 4 year filing period and also the tribes would be treated fairly. The declarations would be filed with the DNR or the senior judges. All claims would be filed within the 4 year period but no hearing would be set. It would not be necessary to do anything until a master was appointed to work toward a preliminary decree.

Rep. Roth wanted to know if the DNR would do all of the preliminary work. Rep. Ramirez said yes, at the direction of the court.

Rep. Curtis said that the claims should be filed with the DNR and the courts also. Rep. Ramirez said that he had no strong objection to this idea but he would like to keep the cost at a minimum.

Rep. Roth asked if they would still pay the same filing fee as stated in SB 76. Rep. Ramirez said they would pay a filing fee but it could be adjusted if necessary.

Rep. Hand asked if the fiscal note for SB 76 would still be the same with the changes. Rep. Ramirez said that this proposal would cut the cost down substantially.

Ted Doney from the DNR was present. Rep. Ramirez asked him if he could give an estimate of the cost reduction and just what he figured it would cost the DNR to operate under this proposal. He said that the DNR estimated a 2.8 million dollar savings over the 4 year period. Chairman Day asked Mr. Doney how much his department would actually need to handle these claims. He said the DNR expenses would come to about 8.8 million dollars over the 4 year period. Mr. Doney explained the reduction to the committee and where the savings would come from.

Rep. Rameriz said that there would be no field investigation necessary. The DNR duties would be limited to receiving claims and outlining some rules of thumb to go by, also sorting and what have you, but there would be no field investigation until the masters are appointed.

It was brought up that the District Court would make the final decision with recommendations from the master judge.

Rep. Day asked who would get the filing fee, the DNR or the court or the general fund. Rep. Ramirez said that the fees would have to be allocated. The initial amount would probably go to the department. There would be an earmark fund.

Senator Galt commented that he thought this would be a workable amendment and would get around the constitutionality problem.

Rep. Hand asked Mr. Siroke what the individual fee would be. He answered approximately \$40 per claim. There would be about 27,000 claims which would be about 11 million dollars.

Rep. Kemmis said that failur to file a claim could lead to rebutable presumption. He said the key is making sure notice provisions are adequate. Rep. Kemmis also said that there should be a severability clause in the bill and maybe they should write something in about qualifications for a master judge.

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Chairman Day asked Rep. Ramariz if he and Rep. Scully could get these proposed amendments drafted so the committee could meet again and discuss them. Chairman Day said that he would appoint a sub-committee on SB 76 and they could get the bill straightened out before the whole committee would meet on it again. He appointed Rep. Scully as chairman of the sub-committee and Rep. Ramirez and Rep. Kemmis as the other members of the sub-committee. He said that the committee attorney, Bob Lane, members from the DNR and anyone else interested could sit in on the meeting if they wanted to. The meeting was scheduled for Friday, March 30th at 10:00 a.m. in room 437.

Rep. Curtiss asked Mr. McGowan if he had any comments on these new proposals. He said that he was disappointed in the delay, but the important thing is to get the bill through. He said that he thought the bill could be workable.

Rep. Nathe asked Ted Merridith if he or any members representing the tribes had any comments. He answered that they had some definite problems with the bill. He said that the tribes do not want to be included in adopting the system. To place the tribes under the judicature with a 4 year delay does not solve the problem. The Indians do not want the water rights under the jurisdiction of a judge who may be prejudice.

Evelyn Stevenson, attorney for the Flathead tribe, was present and stated that this is a complicated bill and will take alot of time to work out.

Chairman Day asked Mr. Merridith why he would rather settle in federal court than state. He felt they would be less prejudice. He said that they must start with a neutral system. There was discussion that followed on this.

Rep. Ramirez said that it seemed that nothing short of excluding the Indians from the bill would satisfy them and it looked like they were just going around in circles and not accomplishing anything.

Mr. Roy, representing the tribes, had just returned from Wyo. where this case was being argued. He read proposed amendments to the committee. A copy is exhibit "A" and is attached to the minutes. He said that 6 out of 7 tribes are willing to negotiate with the state on the water rights but they must not be included in the bill. Mr. McGowan said that he did not feel the bill was necessary at this time and could be disastrous to the state.

Rep. Rameriz said that we need a solution to a very difficult problem and that this bill as amended would be more fair to the tribes than the original bill.

Discussion followed between members representing the tribes and the committee. Nothing seemed to be resolved. Rep. Rameriz said that if they excluded the tribes from the bill it would not be fair to the rest of the state. The tribes argued that they were willing to negotiate a compact idea but refused to be included in the bill. They said that they had everything to lose and nothing to gain and the state had nothing to lose.

Rep. Hand proposed that the committee make an agreement with the tribes to let them out of the bill for 2 years or so and they can try their idea of negotiating. At the end of 2 years if their idea does not work they would automatically be put back in the bill and they would have 2 years to file.

Rep. Rameriz said that he had no problems with that idea but he thinks we are entitled to have a deadline and that deadline should be set now.

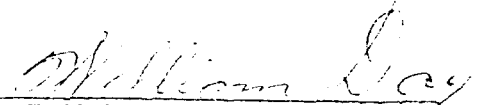
Rep. Scully asked members of the tribes what they thought about the good faith basis and if they would join without litigation 2 or 3 years down the road if negotiations did not work out. The answer was that they did not know at this time but probably not. Rep. Scully said that this committee was going to have to decide whether or not an adjudication would take place.

Chairman Day said that nothing seemed to be getting the committee anywhere with this discussion and he would leave it up to the sub-committee to work out the amendments and report back to the committee.

A motion was made and seconded to adjourn.

Meeting adjourned at 11:15 a.m.

Respectfully submitted,


WILLIAM M. DAY - Chairman

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HOUSE OF REPRESENTATIVES
SUB-COMMITTEE - Senate Bill No. 76
March 30, 1979

The meeting was called to order by the Chairman, Representative Scully at 10 a.m. in room 436 of the Capitol Building on Friday, March 30. Other members present were Representatives Ramirez and Kemmis. Also present were Senator Galt and the Director of the Department of Natural Resources, Ted Doney, and various other observers.

The suggested alternative to the 4 member water district was discussed. Let us go through the amendments and mark them by number, as follows:

- #1 Sanziver amendment
- #2 Sanziver amendment
- #3 The subcommittee amendments
- #4 Sanziver reply to the 3rd amendment
- #5 Confederated
- #6 Senator Steve Brown
- #7 Senator Steve Brown
- #8 Senator Conover
- #9 Dean Zinneker
- #10 MT Inter-Tribal Policy Board
- #11 Judge Sande
- #12 Waterman
- #13 Northern Plains
- #14 Rock Creek

Representative Scully asked if these were still viable. Representative Burnett said, we have done what they want to do anyhow, putting it back in District Court.

- #15 State Lands - these are basically questions
- #16 Eliminate Water Court (as the bill was read)
- #17 Postpone Water Court
- #18 general amendments

#17A additional amendments to 6, 7 and 8.

REPRESENTATIVE KEMMIS: Wondered whether to have the Senior Judge appoint the Water Judge or have the Supreme Court do it.

REPRESENTATIVE RAMIREZ: Maybe we should stick with the Water Judge and eliminate politics. He then asked what are the rules on appointment of a Master Judge. Mr. Scully said, there are rules but we have to prepare a mandate for the procedure for appointment.

There was discussion about the filing.

Representative Scully asked if it should be with the Department of Natural Resources. The question was raised, whether it should be within the neighborhood rather than go to Helena. Discussion about the best way to do this. The department has 7 or 8 field offices at the present time, located in Billings, Miles City, Glasgow, Kalispell, Missoula, Havre, Great Falls, Helena, and also Lewistown. The question was asked if they all have microfilm equipment in each office, and the answer was yes, except Missoula, which will have it very soon. Then followed discussion about how many new people would have to be hired, about 2 1/2 in each field office and the second year, 3 new people, and so on.

It was noted that under the Ramirez proposal there would be a fiscal request of \$500,000 for the first year. The third year it would be 1.6 million and the fourth year, 3.6 million. They had figured a 6 year projection. Mr. Doney said, we only need \$500,000 to kick it off and then it will be self-supporting and it will be in the black.

Representative Ramirez asked how long the field work would go on, and Mr. Doney answered that if you have mandatory adjudication it will go on forever.

Representative Scully asked how many working days a year, and Mr. Doney said they work 2,080 hours. Then followed discussion about staff.

Representative Ramirez made the comment that we need to write some guidelines for the Master concerning field investigations, otherwise it could get out of hand. Discussion about errors and how they might be corrected. Representative Ramirez asked if you have aerial photographs and coverage could you eliminate the errors. Discussion about this.

Mr. Doney stated that they are estimating 10% to eliminate errors. The claims for prima facie evidence of the right. But someone else could say, "no" you don't have that right so then the judge would have to be called.

Representative Ramirez. If we set some fairly generous application standards then people will feel that they can live with those and we can eliminate a tremendous number of field investigations.

Mr. Doney. You will have to be careful to not bump into some of the Supreme Court cases. We have these rule of thumb standards that we apply and they are very generous.

The question was raised whether they would want to set some minimum standards for qualification of the Water Masters. Should it be an attorney, or what type of qualification. Mr. Scully said, he felt they would probably want to leave it open. Discussion about maybe it could be an attorney or someone experienced with water law and rights.

Senator Galt suggested that they should also have something written up on how to get rid of them.

Mr. Doney said they would like to explain their amendments. He felt they should be explained regardless of what you do with the courts.

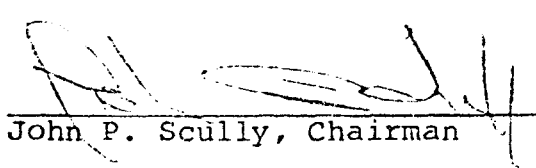
It was decided to do this at the next meeting to be held on Monday morning at 8:00 a.m.

Then followed discussion about the general approach that Ramirez has suggested.

TED DONEY:

I want a statement to go on the record.
"The Department does feel that mandatory adjudication will not work but if it is adopted I would recommend that the bill be signed."

There was some other general discussion and the meeting adjourned at 11:10 a.m.



John P. Scully, Chairman

JPS:mec

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HOUSE OF REPRESENTATIVES
SUBCOMMITTEE - Senate Bill No. 76
April 2, 1979

The meeting was called to order by Chairman John Scully at 9:45 a.m. in room 436 of the Capitol Building. Other members present were Representatives Ramirez and Kemmis. Also present were the Director of the Department of Natural Resources, Ted Doney, other members of his staff, and various other observers.

The purpose of the meeting today was to go over the proposed substitute bill that the staff attorney had revised to the committees suggestions. Also, the Department of Natural Resources presented some amendments to the substitute bill, which will be considered.

Representative Kemmis questioned the water divisions having jurisdiction. He felt that this was a technical problem but should state that the district court has jurisdiction. Also he questioned the language on page 12, lines 15 through 18, if this language is really necessary. Rick Gordon, DNRC, replied that this is the same language that appears in the notice. Representative Ramirez stated that this language was material to the Indian claims and careful consideration should be taken before removal.

Representative Ramirez felt the word, "appoint", on page 1, should be changed to, "designate." There was no objection to this change. He stated that we may need to specify exclusive jurisdiction from judicial jurisdiction.

The Department of Natural Resources distributed a map of the judicial districts and the water districts.

Representative Scully suggested striking lines 22 through 24, on page 1. He did not feel that language should be within the bill. There was no objections.

Representative Ramirez suggested using the word, "venue" instead of, "jurisdiction."

Representative Scully questioned the appointment of the water master. He did not feel his appointment needed the concurrence of the district senior judges. He would be working with the water judge and the judge should have his preference. There was no objection so the material was stricken on page 3, lines 6, 7, 14 and 15.

Representative Scully suggested that we plug in the procedure rules for condemnation. A declaration that the water judge is one of the district

judges. He questioned what would happen to the rest of the judge's caseload. After discussion it was decided that this would have to be addressed after we found out what was going to happen in the districts. Another question was raised concerning what would happen if the district judge's appointment was ended. Would he still be the water judge?

Representative Scully suggested making the effective date upon signing so that things could get started. Mr. Doney stated that their proposed amendments changed the date of declaration from July 1, 1979 to October 1, 1979. There was a question on the date of the water masters appointment. It is set at being after July 1, 1982, and must be appointed on or before July 1, 1983. These dates were changed to July 1, 1980 and July 1, 1982. The committee did not feel the date of appointment was soon enough for the work load the water master would have.

Representative Kemmis questioned page 4, "disqualification." He did not feel the water master should be included in the disqualification because he is not a district judge. Representative Scully said that we could put in our opinions but they would do what they wanted anyway. Water master was stricken from the disqualification section with no objections.

Representative Kemmis questioned the exclusive jurisdiction of the water division. Representative Scully said these would be the states recommendations unless special order by the Supreme Court. This language could be added for specification.

Representative Kemmis stated that we should clarify that a water judge is also a district judge and if he is not reelected as a district judge then a vacancy occurs. There was no objections.

Representative Scully questioned the forfeiture clause. He felt the words, "rebuttable presumption," which was in the original bill, would be better than, "conclusive presumption." After discussion it was decided to address this to the full committee for a decision.

Representative Scully questioned page 15, line 13, the language, "direction of the water judge." He felt that there should be an order by the court. After discussion the language was left the same.

Representative Scully addressed the recommendation on the Indian's reservation. After discussion it was decided that they would leave that section out of the proposed bill for the full committee to decide

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Subcommittee - Senate Bill No. 76

April 2, 1979

Page 3

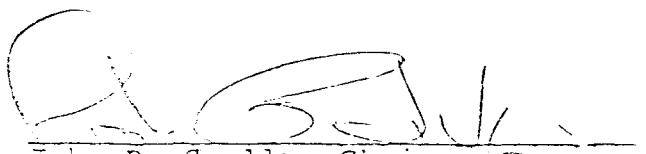
upon.

At this time Rick Gordon, DNRC, began to explain their proposed amendments. Amendments numbers 1, 2, and 5 were accepted and amendment number 6 was okayed if written as a new section.

Representative Scully suggested waiting to decide on the amendments until Representative Ramirez returned.

Representative Scully announced a meeting for tomorrow, April 3, 1979, at 9:00 a.m. At this meeting the subcommittee will finalize the bill to send to the full committee on Wednesday for their consideration.

The meeting was ajourned at 10:30 a.m.


John B. Scully, Chairman

Judy J. Mook, Secretary

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION'S PROPOSED AMENDMENTS TO
SENATE BILL 76

AMENDMENTS TO SUBCOMMITTEE'S PROPOSED SUBSTITUTE BILL

- ok* (1) Page 4, line 11.
Following: "to"
Strike: "July 1, 1979"
Insert: "October 1, 1979"
- ok* (2) Page 4, line 19.
Following: line 18
Insert: "or pertinent portion thereof"
- ✓* (3) Page 7, line 8.
Following: "from"
Strike: "July 1, 1979"
Insert: "October 1, 1979"
- (4) Page 8, line 3.
Following: "shall"
Strike: "exclusively" *exemption for fed. gov. entities*
- ok* (5) Page 8, line 30.
Following: "claimant"
Strike: "may"
Insert: "shall"
- ok as a new Paragraph.* (6) Page 9, line 1.
Following: "photographs"
Insert: "showing to scale the point of diversion,
place of use, place of storage, and other
pertinent conveyance facilities, and"
- amending* (7) Page 9, line 11.
Following: "Section 15."
Strike: "Notice of requirement"
Insert: "Order"
- (8) Page 9, lines 12 through 13.
Following: "claim"
Insert: "(1)"
Following: "The"
Strike: "department"
Insert: "Montana Supreme Court"
Following: "shall"
Strike: "provide notice of the requirement"
Insert: "on or before October 1, 1979 issue an order"

- 86
- (9) Page 9, line 15.
Following: "RIGHTS"
Strike: "NOTICE"
Insert: "ORDER"
- (10) Page 9, line 20.
Following: "This"
~~Strike: "is notice of commencement of procedures for"~~
Insert: "order ~~is notice of~~"
- (11) Page 10, line 1.
Following: "is"
Strike: "notified that"
Insert: "ordered to file"
- (12) Page 10, line 2.
Following: "right"
Strike: "is required to be filed"
- (13) Page 10, line 13.
Following: "it."
Insert: "(2) Upon petition of the *attorney gen.* department, the Montana Supreme Court may issue the order called for in subsection (1) with a shorter claim filing period of not less than one year in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged."
- (14) Page 10, line 14.
Following: "notice"
Insert: "of the order"
- (15) Page 10, lines 17 through 18.
Following: "the"
Strike: "department of natural resources and conservation"
Insert: "Montana Supreme Court"
Following: "notice"
Insert: "of the order"
- (16) Page 10, line 19.
Following: "cause"
Strike: "a notice"
Insert: "the order"
- (17) Page 10, line 23.
Following: "month of"
Strike: "July"
Insert: "October"
- 230

- (18) Page 10, line 25.
Following: "cause"
Strike: "a notice"
Insert: "the order"
- (19) Page 10, line 29.
Following: "of the"
Strike: "notice"
Insert: "order"
- (20) Page 11, line 1.
Following: "the"
Strike: "notice"
Insert: "order"
- (21) Page 11, line 6.
Following: "of the"
Strike: "notice"
Insert: "order"
- (22) Page 11, line 9.
Following: "the"
Strike: "notice"
Insert: "order"
- (23) Page 11, line 12.
Following: "(5)"
Strike: "The water division"
Insert: "It"
- (24) Page 11, line 13.
Following: "notice"
Insert: "of the order"
- (25) Page 11, line 14.
Following: "section."
Insert: "(6) It may also in its discretion order that
the department or the water division assist the
Supreme Court in the carrying out of this section."
- (26) Page 12, line 11 through 12.
Following: "(1)"
~~Strike: "The state of Montana upon relation of the
attorney general shall petition each water division
to"~~
Insert: "The Montana Supreme Court"
Following: "shall"
Strike: "petition each water division to"
- The Supreme Ct.*

- (27) Page 12, line 13.
Following: "Right" *within*
Strike: "~~within the water division~~"
Insert: "a "
- (28) Page 12, line 15.
Following: "requirement"
Strike: "by the water division"
- (29) Page 13, line 9.
Following: "after"
Strike: "June 30, 1983"
Insert: "the close of the filing period"
- (30) Page 14, line 14.
Following: "\$20"
Insert: "~~plus the cost of printing~~"

*\$20 or the cost of printing
or which ever is greater.*

Four alternatives for Indian and Federal water reservations:

- 1) Exclude tribes fully with compact
 - a) suspension of consideration of bringing legal action for three years
- 2) Compact only with no consideration of bringing tribes and federal reservations into state court
- 3) Include tribal and federal reservations in the initial order, but suspend any legal action for three years in order to form a compact
- 4) Include fully the tribes and federal reservations with no consideration of a compact.

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,
GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,
THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN
BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF EXISTING
WATER RIGHTS IN MONTANA; AMENDING SECTIONS 85-2-102, 85-2-112, 85-2-
113, 85-2-114, 85-2-401, 85-2-405, AND 85-2-406, MCA; AND REPEALING
SECTIONS 85-2-201 THROUGH 85-2-210, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. District court water divisions - water
judges - creation. (1) To adjudicate existing water rights the
judicial districts defined in 3-5-101 are assigned to water divisions
established in [section 2]. A judicial district may be assigned to
more than one water division. A water division shall be presided
over by a water judge.

(2) A water judge shall be designated effective July 1, 1979,
for each water division by a majority vote of a committee composed
of the senior judge in each judicial district assigned to the division.
To be a water judge a person must be a district judge within the water
division. A district judge may not sit as a water judge in more than
one division.

(3) No water division has (subject matter jurisdiction) beyond
matters concerning the determination and interpretation of existing
water rights within the boundaries formed by the natural divides between
the drainages specified in [section 2] for that division and the
border of the state of Montana.

1 (4) A water judge, when presiding over a water division,
' presides as district judge in and for each judicial district assigned
3 to the division.

4 (5) The subject matter jurisdiction of each judicial district
5 concerning the determination and interpretation of existing water
6 rights ^{exclusively} is exercised by it through its water division ~~and is exclusive.~~

7 NEW SECTION. Section 2. Water division defined - Jurisdiction
8 defined. There are four water divisions to which the judicial
9 districts defined in 3-5-101 are assigned as follows: (1) The Yellow-
10 stone River Basin Water Division consists of Judicial Districts 6, 7,
11 13, 14, 16, and 18, and does not have subject matter jurisdiction be-
12 yond areas drained by the Yellowstone and Little Missouri Rivers and
13 remaining areas within the water division which do not drain into
14 another water division.

15 (2) The Lower Missouri River Basin Water Division consists of
16 Judicial Districts 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, and does
17 not have subject matter jurisdiction beyond areas drained by the
18 Missouri River from below the mouth of the Marias River, and remain-
19 ing areas within the water division which do not drain into another
20 water division.

21 (3) The Upper Missouri River Basin Water Division consists of
22 Judicial Districts 1, 2, 5, 6, 8, 9, 10, 12, 14, and 18, and does not
23 have subject matter jurisdiction beyond areas drained by the Missouri
24 River to below the mouth of the Marias River, and remaining areas
25 within the water division which do not drain into another water division.

26 (4) The Clark Fork River Basin Water Division consists of Judicial
27 Districts 1, 2, 3, 4, 11, and 19, and does not have subject matter

(3) After a water judge issues a preliminary decree, the water master shall assist the water division in the performance of the water division's further duties as ordered by the water judge.

NEW SECTION. Section 6. Jurisdiction of the water division.

(1) All matters concerning the determination and interpretation of existing water^{rights} shall be brought in or immediately transferred to the water judge in the (proper water division) unless witnesses have been sworn and testimony has been taken by a district court prior to July 1, 1979.

(2) The water judge by and through the water division's judicial districts has jurisdiction to appoint and supervise a water commissioner.

(3) The water judge by and through the water division's judicial districts has jurisdiction over enforcement of the provisions

of a final decree issued in that water division as provided in [section 24].

NEW SECTION. Section 7. Disqualification of water judges or

water master. (1) A water judge may disqualify himself or the water master in any proceeding in which his or the water master's impartiality might reasonably be questioned.

(2) A water judge may also disqualify himself or the water master in the following circumstances:

(a) if he or the water master has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) if in private practice he or the water master served as a lawyer in the matter in controversy or a lawyer with whom he or the water master previously practiced law served during such association as a lawyer concerning the matter or the judge or the lawyer has

with new 1 NEW SECTION. Section 8. Designation of water judge to fill
language 2 vacancy. (1) If a vacancy occurs, a person shall be designated
3 to complete the unexpired term of a water judge in same manner
4 as provided in [section 1] for the initial designation of a water
5 judge. A vacancy is created when a water judge is not elected
6 to a subsequent term.

7 (2) Designation to subsequent terms shall be made in the
8 manner as provided in [section 1].

Insert 9 NEW SECTION. Section 10. Promulgation of rules and prescription
10 of forms. The Supreme Court may promulgate special rules of
11 practice and procedure and shall prescribe forms for use in
12 connection with this [act] in consultation with the water judge
13 and the department.

14 (subsequent sections will be renumbered)

with new 15 NEW SECTION. Section 12. Department of Fish and Game to
language 16 represent public recreational uses. The Department of Fish and
17 Game shall exclusively represent the public for purposes of
18 establishing any prior and existing public recreational use in
19 existing right determinations under sections [11 through 25],
20 provided that the foregoing shall not exclude a federal governmental
21 entity from representing the public for the purpose of establishing
22 any prior and existing public recreational use in existing right
23 determinations under [section 11 through 25] and further provided
24 that the foregoing shall not be construed in any manner as a leg-
25 islative determination of whether or not a recreational use sought
26 to be established prior to July 1, 1973, is or was a beneficial use.

FISCAL NOTE

Description of Proposed Legislation:

Senate Bill 76 revised to adjudication through district courts.

Fiscal Impact:	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>	<u>Total</u>
DMRC Expenditures	806,241	965,435	1,207,476	2,095,895	2,057,873	2,002,320	\$ 9,135,240
Court Expenditures	-0-	-0-	311,787	293,582	310,246	324,318	\$ 1,239,933
State Lands Expenditures	20,764	20,575	9,450	-0-	-0-	-0-	\$ 50,789
Total Expenditures	827,005	986,010	1,528,713	2,389,477	2,368,119	2,326,638	\$10,425,962
Revenue	330,000	1,100,000	2,200,000	7,370,000	-0-	-0-	\$11,000,000
Net Effect	(497,005)	113,990	671,287	4,980,523	(2,368,119)	(2,326,638)	\$ 574,038
Fish and Game (Not General Fund)	\$203,000	\$225,000	\$219,000	\$60,000			

4-3-79

DNRC

Staffing Numbers

Worksheet

Number of claims
expected per yearNumber of claims
Filed per field office
per yearNumber of claims
Filed per field office
per WEEK

FY	Number of claims expected per year	Number of claims Filed per field office per year	Number of claims Filed per field office per WEEK
FY 80	2,000	1,000	20
FY 81	27,000	3,000	65
FY 82	55,000	6,111	118
FY 83	185,000	20,555	2283

Computation of staff needed per field office per week:Duties of each field office per week:

1. Field check 10% (3 claims per week/engr)
2. Assistance to claimants (3 hrs/claim for 1/4 claims)
3. Process claims, corrections, fees & microfilm
4. Public Workshops, meetings, Notice preparation
5. Code claim data into computer & verify (30min/claim)
6. Hearings preparation & Assistance to the court
7. Administration & training
8. Other - computerize & microfilm Co. filings
9. Annual & sick leave.

FY	FY	FY	FY	FY
80	81	82	83	84
hours per week	hours per week	hours per week	hours per week	hours per week
-0-	-0-	200	240	240
20	50	90	300	-0-
20	50	90	150	150
20	10	10	20	-0-
10	40	60	100	100
1	2	2	5	10
10	10	10	10	10
40	20	10	10	10
20	30	50	100	60

Total man hours per field office per week: 140 212 482 935 580

Number of hours ÷ 40 hrs/wk = No. of people per

Field office needed: 3.5 5.3 12.0 23.4 14.5

Field office requested: 3.7 4.3 5.7 11.4 9.3

Staff Summary

Position title	Grade	80 No.	81 No.	82 No.	83 No.	84 No.	85 No.
Program Manager	16	1	1	1	1	1	1
Program Assistant	15	1	1	1	1	1	1
Secretary	3	1	1	1	1	1	1
Systems Analyst	14	1	1	1	1	1	1
Programmer	13	2	1	1	1	1	1
Writer-Editor	13	1	1	1	1	1	1
Field Agent	14	3	7	9	9	9	9
Field Engr.	13	2	4	9	27	27	27
Water-Rights Analyst	10	3	5	9	27	27	27
Records Tech.	7	2	7	7	9	3	3
Analyst-Clerk	8	4	3	8	13	13	13
Keypunch Operator	5	2	5	10	18	18	5
		35	49	60	109	103	90

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EXPENDITURES - WATER COURT
SCHEDULE A

7-71

	<u>FY 79</u>	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>
ter Judge Master	35,000	(4) 140,000	(4) 140,000	(4) 140,000	(4) 140,000	(4) 140,000	(4) 140,000
ra Legal (14)	15,206	(4) 60,824	(4) 60,824	(4) 60,824	(4) 60,824	(4) 60,824	(4) 60,824
gineer (14)	15,206	(4) 60,824	(4) 60,824	(4) 60,824	(4) 60,824	(4) 60,824	(4) 60,824
cretary (8)	9,096	(4) 36,384	(4) 36,384	(4) 36,384	(4) 36,384	(4) 36,384	(4) 36,384
counting Clerk (9)	9,896	(4) 39,584	(8) 79,168	(8) 79,168	(8) 79,168	(8) 79,168	(8) 79,168
cords Tech (10)	10,774	(4) 43,096	(4) 43,096	(8) 86,192	(8) 86,192	(8) 86,192	(8) 86,192
		<u>380,712</u>	<u>420,296</u>	<u>463,392</u>	<u>463,392</u>	<u>463,392</u>	<u>463,392</u>
Salary Increase		<u>22,843</u>	<u>51,946</u>	<u>83,786</u>	<u>116,617</u>	<u>151,414</u>	<u>188,307</u>
		<u>403,555</u>	<u>472,242</u>	<u>547,178</u>	<u>580,009</u>	<u>614,814</u>	<u>651,699</u>
enefits 15%		<u>60,533</u>	<u>70,837</u>	<u>82,077</u>	<u>87,001</u>	<u>92,222</u>	<u>99,255</u>
al Personal Services		<u>464,088</u>	<u>543,079</u>	<u>629,255</u>	<u>667,010</u>	<u>707,034</u>	<u>750,954</u>
		<u>4,000</u>	<u>4,100</u>	<u>4,200</u>	<u>4,300</u>	<u>4,400</u>	<u>4,500</u>
tracted Services		<u>3,200</u>	<u>3,400</u>	<u>3,600</u>	<u>3,800</u>	<u>4,000</u>	<u>4,200</u>
plies & Materials		<u>5,000</u>	<u>5,200</u>	<u>5,400</u>	<u>5,600</u>	<u>5,800</u>	<u>6,000</u>
at		<u>8,000</u>	<u>8,400</u>	<u>8,800</u>	<u>9,200</u>	<u>9,600</u>	<u>10,000</u>
ommunications		<u>12,000</u>	<u>12,600</u>	<u>13,200</u>	<u>13,800</u>	<u>14,400</u>	<u>15,000</u>
vel		<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>	<u>5,000</u>
er		<u>37,200</u>	<u>38,700</u>	<u>42,260</u>	<u>41,700</u>	<u>43,200</u>	<u>44,200</u>
al Operating		<u>15,000</u>	<u>5,000</u>	<u>3,000</u>	<u>3,000</u>	<u>3,000</u>	<u>3,000</u>
ital Equipment		<u>516,288</u>	<u>586,779</u>	<u>676,455</u>	<u>711,710</u>	<u>753,214</u>	<u>797,154</u>
		<u>-0-</u>	<u>-0-</u>	<u>311,787</u>	<u>293,582</u>	<u>310,046</u>	<u>324,318</u>
ND TOTAL							

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EXPENDITURES - DNRC

Schedule B

[illegible]

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HOUSE OF REPRESENTATIVES
SUBCOMMITTEE - Senate Bill No. 76
April 3, 1979

The meeting was called to order at 9:30 a.m. in room 436 of the Capitol Building. Members present were Representative Kemmis and Representative Ramirez, Chairman Scully arrived later. Also, present were Senator Jack Galt, Representative Audrey Roth, Representative Dennis Nathe, Ted Doney and members of his staff, and various other observers.

Bob Lane, Staff Attorney, submitted the rewritten pages of the proposed substitute bill, with the amendments discussed at yesterday's meeting. These pages will be referred to in the following discussion.

Representative Ramirez suggested changing the language on page 2, line 6, to clarify the intent. He inserted, following: "is" the word, "exclusively," and following: "division," strike: "and is exclusive."

Representative Ramirez stated that it really bothered him to use the words, "subject matter jurisdiction," which appears on page 1, line 23. He felt the proper words to use would be, "proper venue." He went on to explain that it is a venue statute. We are setting up a procedure where we get all the cases in district court. We want to remind the court to transfer these cases to the court of proper venue. All proceedings that we institute under this act is a proceeding that is deemed to be filed in the court of the jurisdiction of the water judge of that division. This is where we are deeming these proceedings to be filed. Once filed we will call in the water judge. We do not want to limit jurisdiction to one county.

Representative Kemmis felt there was a need to specify, "proper water division," page 4, line 7. We are talking about the water division in which the claim is made. He felt we should go back to the definition that was in the original bill, which stated that there are four water court districts whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described fully later in the bill.

Representative Ramirez said they would have to say they are going to be transferred to the water judge within that drainage. Does that mean that everything is in his county? It is not transferred to him but he assumes jurisdiction to all claims and has authority to hear them in any division county, he sees fit, without regard to county boundaries.

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Representative Scully stated that we would be better off naming the numerated districts that are in each division.

Representative Ramirez stated that we have three things we have to do:
1) divide the divisions along drainage lines, 2) every claim is to be filed with the Department and a copy sent to the county of use or diversion, but as far as proceedings are deemed transferred to the district court of that county, and 3) after we have our selection of the water judges they are deemed to assume jurisdiction of each claim within the division boundaries and they have the authority to hear those claims in any county that is all or partially in the division and can consolidate those claims.

Representative Scully announced that the committee would finish considering the amendments proposed by the Department of Natural Resources. All the amendments were accepted except for number 3, and some slight revisions on numbers 4, 6, 13, 26, and 30. Note these changes on the attached copy.

As the meeting came to a close Representative Scully stated that the subcommittee was not making any recommendation on the Federal and Indian reservations but would present the following four alternatives for the full committee to consider:

- 1) Exclude tribes fully with compact
 - a) suspension of consideration of bringing legal action for three years
- 2) Compact only with no consideration of bringing tribes and federal reservations into state court.
- 3) Include tribal and federal reservations in the initial order but suspend any legal action for 3 years in order to form a compact.
- 4) Include fully the tribes and federal reservations with no consideration of a compact.

The meeting was adjourned at 11:00 a.m.



John B. Scully, Chairman

Judy J. Mook, Secretary

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HOUSE SELECT COMMITTEE ON WATER

April 4, 1979

The meeting was called to order by Chairman Day at 10:10 a.m. with all members present.

Representative Scully, subcommittee chairman, explained that the subcommittee had met four times to consider SB 76. We have taken a new approach from the original drafting. We were unable to get copies of the substitute bill ready for the meeting today, however, they will be ready by tomorrow. At this time he explained the actions the committee had taken and the changes that they had made. We put the water judges back into the district courts. The water division lines will follow the drainage lines. The senior judges will select a water judge for each division. The water judge will select a water master. The people will file their claims with the Department of Natural Resources and they will send a copy to the county of diversion or place of use. The starting dates have been changed from July to October. Also, the dates of appointing the water master have been changed from July 1, 1982 and before July 1, 1983, to July 1, 1980 and July 1, 1982. The Attorney General will petition the Supreme Court for an order to adjudicate claims.

The amendments the subcommittee made meets most of the amendments proposed. We made no recommendation on the federal and Indian reservations except, we are presenting four alternatives for the full committee to consider. (attached)

He concluded stating that the whole bill will be drafted by tomorrow for the committee to review. We would like the committee to act on the proposed alternatives for federal and Indian reservations so they can be included in the draft we present tomorrow.

Representative Hand asked if the substitute bill would change the fiscal impact?

Representative Scully said it would. He stated that he thought it would be safe to say that there will be a fiscal impact in the second half of the biennium. The committee decided to get the mechanics down, but did not work on the fiscal note.

Representative Ramirez said the committee did not have the fiscal impact down but he felt it would be less with the proposed substitute bill.

Ted Doney, Department of Natural Resources, stated that they had prepared a fiscal note for the new substitute bill. It is their intent to present it in the Senate when the bill goes back. Copies of the fiscal note were distributed to the committee. (copy attached)

Representative Scully moved to have a legislative fiscal note worked up for the legislature to observe. The motion was carried unanimously.

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Representative Kemmis suggested that there be a legislative oversight committee added to the bill.

Representative Ramirez stated that Representative Curtiss had a bill to this effect but it had been killed in the Appropriation Committee.

Representative Scully suggested we resurrect that bill and incorporate it into SB 76.

Representative Kemmis moved to have Chairman Day move, on the House floor, to have this bill put into the Water Committee. The motion was carried unanimously.

Representative Roth moved to accept the third proposal for the Indian and federal reservations. "#3. Include tribal and federal reservations in the initial order, but suspend any legal action for three years in order to form a compact."

Representative Dassinger asked for the Indian's opinion on the proposals.

The Indian delegation stated that they preferred proposal #2. "#2. Compact only with no consideration of bringing tribes and federal reservations into state court."

Representative Kemmis stated that he felt the Indians could be left out of the bill for two years. We are forcing them to compact.

Representative Ramirez stated that he was concerned for the Indian's. As soon as adjudication is started they run the risk of losing jurisdiction in federal court and going into state court. What this amounts to is they will go to federal court by October of 1979.

Representative Kemmis stated that if we don't include the Indians in the initial order and we give everyone else four years the Indians will only get two years.

Representative Ramirez stated that if we exempt the Indians then others may want the same consideration. We have to treat everyone alike.

Representative Kemmis said we have a lot of reasons for giving the Indians special consideration. The best solution is by a compact. We have to develop a mechanism to form a compact. He did not feel that forcing them into the bill was the way to go about forming a compact. He felt they should be left out for two years, include compact language in the bill that the tribes would be included in an order in October of 1981.

Representative Ramirez called for the question. The call was withdrawn.

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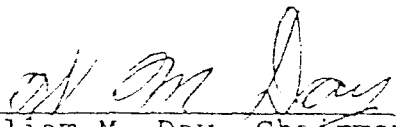
Representative Nathe asked if all we are talking about is the quantification of their water rights, but not through claims to water, as such?

Representative Ramirez said we are talking about both.

The motion to adopt proposal #3 was carried with Representatives Dassinger and Kemmis opposed.

Chairman Day announced that there would be another meeting to consider the substitute bill, Thursday, April 5, at 11:00 a.m.

The meeting was adjourned at 11:00 a.m.



William M. Day, Chairman

Judy J. Mook, Secretary

UTE INDIAN COMPACT

The State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservation, and the United States of America acting through their respective representatives after negotiations, have agreed to a Ute Indian Compact as follows:

ARTICLE I

Purposes of Compact

The major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters claimed by the Ute Indian Tribe under the Winters Doctrine and to resolve conflicting claims concerning criminal and civil jurisdiction and hunting and fishing rights within the exterior boundaries of the Uintah and Ouray Indian Reservation.

ARTICLE II

Legal Basis for Compact

This Compact is made in accordance with the Constitution and laws of the State of Utah and the Constitution and Ordinances of the Ute Indian Tribe, and in conformity with the general requirements of federal and state law as more specifically set out in the Acts of June 18, 1934, 48 Stat. 984, 25 U.S.C. § 461 et seq.; April 11, 1968, §2 Stat. 78, 25 U.S.C. §§ 1321-1326; and Sections 63-36-9 through 63-36-21, Utah Code Annotated, 1953, as amended.

ARTICLE III

Resolution of Claims

The Ute Indian Tribe claims substantial rights in and to the waters traversing or adjacent to the Uintah and Ouray Reservation under the Winters Doctrine which have not been fully quantified, adjudicated, or otherwise determined. Furthermore,

there is a present dispute between the parties with respect to the boundaries of the Uintah and Ouray Indian Reservation. The Tribe claims that the original exterior boundaries of the Reservation have remained intact and are the same today as when originally established; whereas, the State of Utah contends that the original reservation boundaries were disestablished and that the present reservation boundaries include only the trust lands. The basic purpose of the Compact is to finally quantify and settle Ute Indian water rights as well as to preserve to the Tribe general jurisdiction over matters within the trust lands and to confirm in the State and its political subdivisions jurisdiction over non-Indian affairs on nontrust lands. Certain compromises and accommodations are set forth in this Compact in order to accord to the Tribe certain jurisdictional protections on nontrust lands where vital Indian interests are at stake. In short, the terms of this Compact are intended to resolve the present disputes by agreement rather than litigation. It is the further intention of the parties that this Compact be approved by a special tribal election and shall result in legislative enactments by the State of Utah and the United States Congress with the result that the terms herein shall become matters of law as well as matters of agreement. Any ordinance or resolution of the Tribe implementing or affecting this Compact must be submitted to and approved by the Secretary of the Interior prior to implementation. The Secretary is hereby authorized to disapprove any such ordinance or resolution.

ARTICLE IV

Definitions

As used in this Compact, the term

(1) "Indian" shall include all persons enrolled in the Ute Indian Tribe or enrolled in any other federally-recognized Indian tribe, band, nation, or other organized group, or community, and all persons of Indian ancestry who have one-quarter or more

Indian blood; excluding, however, all persons terminated from federal jurisdiction pursuant to any Act of Congress. For federal criminal jurisdiction purposes, the term, "Indian" shall be as defined by federal law.

(2) "Tribal members" mean only those persons who are duly enrolled on the official membership roll of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(3) "Non-Indian" means anyone who is not an Indian as defined hereinabove.

(4) "Trust lands" means all real property held in trust by the United States for and on behalf of any member of the Ute Indian Tribe or for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, located within the settlement area.

(5) "Nontrust lands" means all real property which is not held in trust by the United States for any member of the Ute Indian Tribe or for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah.

(6) "Settlement area" means that area described by the Executive Orders of October 3, 1861, and January 5, 1892, and by the Act of Congress of March 11, 1948, including the Duchesne River drainage, as more fully set out on the map attached hereto and marked Exhibit "A" and incorporated herein by reference. For federal criminal jurisdiction purposes, the "settlement area" shall be the same as "Indian Country" as defined by federal law.

(7) "Tribe" or "Ute Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(8) "State" means the State of Utah.

(9) "Indian entity" shall mean an agency or enterprise of the Tribe or any organization chartered, owned, or sponsored by the Tribe or its members.

(10) "Non-Indian entity" shall mean an organization chartered or sponsored by the State or a political subdivision

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of the State.

ARTICLE V

Establishment of Government Coordinating Committee

(1) There is hereby established a Government Coordinating Committee (the "G.C.C.") composed of the following representatives: the members of the Uintah and Ouray Tribal Business Committee of the Ute Indian Tribe, the Governor of the State of Utah or his designated representative, a representative designated by the governing body of each county in which the settlement area is located, a representative designated by the governing body of each incorporated city or town within the settlement area, the Uintah and Ouray Agency Superintendent for the Bureau of Indian Affairs or his designated representative, a representative of the United States Department of Agriculture, Forest Service and a representative of the United States Department of Interior, Bureau of Land Management.

(2) The G.C.C. shall meet within the disputed area at least once each year in the month of November and at such other times as its chairman shall designate upon reasonable notice to all members.

(3) The G.C.C. shall serve as the liaison forum between the parties for the purpose of implementing this Compact and shall review problem areas arising hereunder.

(4) The G.C.C. shall elect from its members a Chairman who shall be responsible for calling, coordinating and conducting meetings and for disseminating information to the committee members. Until such a chairman is elected, the Governor or his designated representative shall serve as Chairman.

(5) The G.C.C. may designate an Executive Committee composed of the chairperson of the Tribal Business Committee, the Governor or his designated representative, the Agency Superintendent or his designated representative, and a member

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chosen from among the city and county representatives, to coordinate committee activities between committee meetings. The G.C.C. may also establish such ad hoc committees as may appear appropriate, provided that such committees are fairly composed of representatives from the Tribe, the State, the local governments, and the Federal Government.

ARTICLE VI

Criminal Jurisdiction

(1) Arrest. Authority to arrest for the commission of a crime or criminal offense, including upon probable cause to believe that a crime or criminal offense has been committed, shall exist and be exercised as follows:

(a) Duly commissioned officers of the United States such as Federal Bureau of Investigation agents, Bureau of Indian Affairs Agents, and officers deputized by the Bureau of Indian Affairs, shall be authorized to make arrests for violations of Federal law anywhere within the settlement area.

(b) Duly commissioned officers of the State such as highway patrol officers, county sheriffs, city police, and other officers deputized by the State or its agencies, shall have authority to make arrests for violations of State law committed by non-Indians anywhere within the settlement area.

(c) Duly commissioned officers of the Tribe, such as Ute Tribal Police, Ute Fish and Game officers, and any officers deputized by the Tribe, shall have authority to make arrests for violations of Tribal law committed by Indians anywhere within the settlement area.

(2) Detention. Following the arrest and before trial of a crime or criminal offense, persons arrested within

the settlement area shall be detained as follows:

(a) Any person arrested by an officer exercising Federal arrest authority shall be taken to the nearest federally approved detention facility.

(b) Any person arrested by an officer exercising State arrest authority shall be taken to the nearest State detention facility.

(c) Any person arrested by an officer exercising tribal arrest authority shall be taken to the tribal jail.

Thereafter, persons detained may be transported to other facilities maintained by that arresting authority as necessary for arraignment, trial, or other proceedings.

(3) Trial and Punishment.

(a) Indians charged with the commission of crimes or criminal offenses shall be tried and punished only in a Tribal or Federal Court, whichever is appropriate.

(b) Non-Indians charged with criminal violations shall be tried and punished only in a State or Federal Court, whichever is appropriate.

ARTICLE VII

Civil Jurisdiction

The civil jurisdiction of the courts of the State of Utah and of the Ute Indian Tribe of the Uintah and Ouray Reservation shall be exercised as follows:

(1) Civil Jurisdiction when Indians are Parties Defendant.

The Tribe shall exercise exclusive civil jurisdiction over all

cases in which the Tribe, an Indian, or an Indian entity is a party defendant and where the cause of action arises within the settlement area, except those cases in which valid federal jurisdiction is exercised.

(2) Civil Jurisdiction when Non-Indians are Parties Defendant. The State shall exercise exclusive civil jurisdiction over all cases in which the State, a political subdivision of the State, a non-Indian, or a non-Indian entity is a party defendant and where the cause of action arises within the settlement area, except those cases in which valid federal jurisdiction is exercised.

(3) Concurrent Civil Jurisdiction. The Tribe and the State shall have concurrent civil jurisdiction over those cases in which both Indian(s) and non-Indian(s) are parties defendant to the same suit, except in those cases in which valid federal jurisdiction is exercised, and except in cases involving either the Tribe or the State. The bad faith joinder of a party for purposes of conferring jurisdiction on a court which would not otherwise have jurisdiction hereunder except for the joinder shall be a sufficient cause for dismissal of an action.

(4) Service of Process. Service of process from state and tribal courts upon persons physically within the settlement area shall be accomplished as follows:

(a) All persons who desire service of process upon any Indian, or upon the Tribe, or an Indian entity shall make such service in accordance with the Law and Order Code of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(b) All persons who desire service of process upon any non-Indian, non-Indian entity, or the State of Utah or political subdivision thereof shall make such service in accordance with Utah State law.

(c) Tribal police shall serve all process papers upon the Tribe, any Indian, or Indian entity. Police

of the state or subdivision thereof will serve all process papers upon any non-Indian or non-Indian entity.

ARTICLE VIII

Full Faith and Credit

Full faith and credit shall be given in the State of Utah to the public acts, records and judicial proceedings of the Ute Tribe. Full faith and credit shall be given in the Ute Tribe to the public acts, records and judicial proceedings of the State of Utah. In the absence of specific state law or tribal ordinance, such public acts, records and judicial proceedings may be proved by certified copies thereof.

ARTICLE IX

Jurisdiction over Indian Children.

The Tribe has exclusive jurisdiction over any civil or criminal case which affects the custody, guardianship, adoption or parental rights of Indians residing within the settlement area, except in such cases wherein federal jurisdiction is exercised.

ARTICLE X

Deputization of Officers

Authorization is hereby given to the State, the Tribe, and the United States to deputize qualified law enforcement officers within the settlement area for the purpose of rendering mutual assistance in enforcing the applicable law. The parties agree to train, qualify and deputize law enforcement officers forthwith to insure adequate protection of the residents and property of the settlement area.

ARTICLE XI

Taxation and Licensing

1. Within the settlement area (a) the Tribe shall not assess, levy or collect any tax on non-trust lands, or on

leasehold interests, improvements, or personal property located thereon; or (b) exercise any taxing, licensing, zoning, or other regulatory authority on any activity, privilege, or transaction occurring on non-trust lands except as provided in Article XIV and except as provided in paragraph 5 of this Article.

2. Within the settlement area (a) the State or its political subdivisions shall not assess, levy, or collect any tax on trust lands, or on leasehold interest, improvements, or personal property located thereon; or (b) exercise any taxing, licensing, zoning, or other regulatory authority on any activity, privilege, or transaction occurring on trust lands except as specifically provided herein; except as provided in paragraph 5 of this Article.

3. To facilitate the effective administration of sales and use tax, cigarette tax, tax on alcoholic beverages, if any, transient room tax, and motor fuel tax within the settlement area (herein the "Included Excise Taxes"), the State and the Tribe agree to impose and collect included excise taxes under state law which has application to both Indians and non-Indians, the revenue of which will be shared proportionately between the State and the Tribe. The amount of the Tribe's entitlement to such taxes collected by the State as above described shall be _____% and the State's entitlement shall be _____% of all such taxes collected on sales, uses and transactions within Duchesne and Uintah Counties. The percentages representing the respective shares of the Tribe and the State shall be renegotiated every ten years based upon taxable transactions involving Indians and commercial activities on trust lands compared to taxable transactions involving non-Indians and commercial activities on non-trust lands. The State will transmit reports and tax payments to the Tribe for each calendar quarter. Such payments to be made on or before the sixtieth day next succeeding each calendar quarter and if funds collectible by the State are paid later

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they shall bear interest from such day to the date of payment to the Tribe at the interest rate then applicable under State law to deficiencies in such tax.

4. The State or its political subdivisions shall impose no income tax or similar tax against the Tribe, any enterprise predominantly owned by Indians, or income of any Indian measured by or resulting from profits, activities or privileges within the settlement area and the Tribe shall impose no income tax or similar tax against the State or its political subdivisions, non-Indians or non-Indian businesses measured by or resulting from profits, activities or privileges within the settlement area.

5. To facilitate the effective administration (a) of all taxes upon oil, gas, or other minerals and upon all equipment and improvements used in connection therewith (except the interest of the Tribe therein), and (b) of all taxes upon the removal, severance, sale, development, use and storage of oil, gas, or other minerals, and (c) of all taxes upon any right, privilege, franchise or license in connection with any oil, gas or other minerals, or any activity in connection therewith within the settlement area, the State and the Tribe agree to impose and collect all such taxes as the State now imposes within its jurisdiction and all such taxes which the State shall impose in the future, which taxes shall have application to both Indians and non-Indians and to Trust Lands and to non-Trust Lands, the revenue of which will be shared between the State and the Tribe.

The entitlement of the Tribe and the State to such taxes collected by the State which are listed in (a) and (b) above shall be determined by allocating such taxes to the land source of the oil, gas or other minerals in connection with which the tax is imposed. All taxes thus attributed to Trust

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Lands shall be allocated to the Tribe, and all taxes thus attributed to non-Trust lands shall be allocated to the State. The entitlement of the Tribe and of the State to such taxes collected by the State which are listed in (c) above shall be divided as follows: The proportion of the taxes which is reasonably traceable to deposits or possible deposits of oil, gas or other minerals on the Trust lands shall be allocated to the Tribe. In the definition of such proportion, generally accepted accounting principles shall be applied which are consistently followed. All such taxes not allocated to the Tribe in such manner shall be allocated to the State. The method of determining the respective shares of the Tribe and the State shall be renegotiated every ten years based upon experience and all other relevant facts and circumstances.

The State will transmit reports and tax payments to the Tribe for each calendar quarter. Such payments are to be made on or before the thirtieth day next succeeding the date a tax is required to be paid to the State under applicable law, and if funds collectible by the State are paid later, they shall bear interest from such day to the date of payment to the Tribe at the interest rate then applicable under State law to deficiencies in such tax.

ARTICLE XII

Water

There is hereby apportioned, confirmed and recognized from the waters apportioned to the State of Utah from the Colorado River system in perpetuity to the United States of America in trust for the Ute Tribe, the consumptive use of water in the amount of 253,200 acre-feet per annum and the related gross diversion requirement of 481,015 acre-feet per annum from direct stream flow, groundwater, and storage with the priority date of October 3, 1961, for land groups 1 through 5 and the priority dates for land groups 6 and 7 as fully set out in the Priority and Point of Diversion Schedule attached hereto and marked Exhibit B; provided however, that all water allocated to the groups 2 and 5

lands from storage in the Central Utah Project shall be assigned the priority date of the Bureau of Reclamation filing to facilitate the equitable allocation of water to all subscribers of the Project during periods of drought. All water allocated pursuant to this Article shall not be subject to reduction, loss, or forfeiture under the laws of the State of Utah or otherwise, and shall not be restricted to agricultural use, but may be used for any purpose in addition to agriculture, including, but not limited to municipal, industrial, recreational, and in-stream uses and may be exchanged, leased, or transferred to any person, entity, or governmental unit inside or outside the Settlement Area.

All such water apportioned hereby includes all water rights of every nature and description derived from the reserved water rights doctrine expressed in Winters v. United States, 207 U.S. 564 (1908), and subsequent cases; all rights awarded in federal decrees; applications and certificates of appropriation by the State of Utah and includes all types and kinds of uses, whether municipal, industrial, recreational, instream uses or any other use whatsoever, and encompasses all claims asserted by or through the Ute Indian Tribe, its assignees, purchasers, members, former members and leasees, except state water rights purchased by the Tribe from non-Indian users as set out in Exhibit B.

The State Engineer, in a manner not inconsistent with the agreements and covenants contained herein, shall have general administrative supervision of all said waters, and of the measurement, apportionment and distribution thereof, except the Tribe and the United States shall have general administrative supervision of all said waters, and of the measurement, apportionment and distribution thereof within the canal distribution systems below the various points of river diversion within the settlement area.

The Tribe or the United States on behalf of the Tribe may change the point of diversion, place or nature of use after first filing with the State Engineer of the State of Utah a change application and receiving approval thereof. The Tribe or the United States shall have the right to appeal any adverse

decision of the State Engineer pursuant to the provisions contained in U.C.A. 73-3-14 or challenge the same by resort to the United States District Court for the District of Utah.

Included within the practicably irrigable acreages recognized are (1) tribal lands and individual Indian allotments; (2) Uintah Indian Irrigation Project lands, which include tribal lands, allotments, and some private lands which were originally allotted lands; and (3) some few lands, described in Exhibit B, distributed to former tribal members terminated in accordance with the Ute Partition Act, approved August 27, 1954 P.L. 83-671, 68 Stat. 868, 25 U.S.C. §§ 677-677aa. Notwithstanding anything herein contained to the contrary the United States, as a party hereto, does not hereby assume any trust responsibility over the property of terminated Ute Indians as determined by the Act of August 27, 1954 (68 Stat. 868). The total acreage susceptible to sustained production of agricultural crops by means of irrigation is recognized as 129,201 acres, reduced by seven per cent (7%) to 120,157 acres to reflect actual road, yards, fences, rights-of-way and other non-productive lands.

Nothing contained herein shall be construed to preclude the United States, the Ute Tribe, or any of its members from filing application for the appropriation of additional water under the laws of the State of Utah.

This Article is made pursuant to the Agreement dated the 20th day of September, 1965, between the United States of America, the Ute Indian Tribe of the Uintah and Ouray Reservation and the Central Utah Water Conservancy District, but extending to additional parts of the settlement area and containing extended provisions to carry into effect the general intent of the parties thereto. The provisions of said Agreement of September 20, 1965, shall remain binding upon the parties thereto and continues in full force and effect except as herein expressly modified.

ARTICLE XIII

Hunting and Fishing Rights of Tribal Members

Individual enrolled members of the Ute Tribe shall have the right to hunt, fish, deer, and trap within the settlement area; however any harvested game and/or fish shall not be used for commercial purposes by said member. In exercise of such hunting, fishing, and trapping right

the Tribe shall be governed by the Ute Indian Wildlife and Outdoor Recreation Code which shall be strictly enforced. In addition, the Tribe agrees to regulate hunting, fishing, and trapping practices of the members of the Tribe so as to insure the maintenance of a proper biological balance between wildlife populations and available habitat for all species of fish and game within the settlement area.

Individual enrolled members of the Tribe must obtain permission from the owners or occupants of privately-owned land before hunting, fishing, boating or trapping thereon. The hunting and fishing rights of enrolled members shall not extend to designated recreation areas, fish hatcheries and restricted game and bird refuges except as authorized by law.

The parties agree to cooperate in the exchange of information, establishment of seasons, bag limits, and other matters pertaining to the preservation of the available habitat and biological balance of the various species of fish and game within the settlement area.

ARTICLE XIV

Hunting and Fishing by Non-Tribe Members

The State shall retain its existing authority over hunting, fishing, boating and trapping by all persons other than enrolled members of the Tribe on all non-trust lands within the settlement area. The Tribe shall have jurisdiction to license and regulate all such activities on trust land by any persons including non-Indians. The parties agree not to unreasonably restrict access on state and county roads or Indian Service primary routes within the settlement area during state hunting seasons.

ARTICLE XV

Management of National Forest & Public Lands

Nothing in this agreement shall in any way diminish, interfere with or in any other way affect the management, protection and control of National Forest lands, Public lands, all other Federal lands and State lands by the Federal and State agencies responsible therefor, or the enforcement of laws and regulations pertaining to such lands.

ARTICLE XVI

Actions Under This Agreement and Sovereign Immunity

For purposes of compelling compliance with the terms of this Compact, each party, including its political subdivisions, waives the defense of sovereign immunity, including any defense under the Eleventh Amendment to the United States Constitution. The United States District Court for the District of Utah is hereby granted jurisdiction to adjudicate any case or controversy arising under the terms of this Compact.

ARTICLE XVII

Severability

The terms, conditions, covenants, and agreements contained herein shall not be severable one from another, and it is understood and agreed that each such term, condition, covenant, and agreement contained herein constitutes a necessary and indispensable part of the consideration for each and every other such term, condition, covenant, and agreement.

It is understood and agreed that the terms, conditions, covenants, and agreements contained herein are designed and intended to apply to, meet, and resolve the specific, particular, and unique problems, conditions, and circumstances existing between the parties hereto and their citizens, members,

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governments, officers, agencies, and political subdivisions and it is agreed, understood, and declared that this Compact and the terms, conditions, covenants and agreements contained herein shall not serve as or constitute a precedent binding upon any party hereto or their citizens, members, governments, officers, agencies or political subdivisions in relation to any other circumstance, situation, individual, organization or group. It is further specifically understood that this Compact shall not serve as such a precedent in any litigation between the State of Utah or any agency, officer or political subdivision of the State of Utah involving any other Indian tribe, band, group, community or individual.

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EXHIBIT "A"

Re: S. 76 Amendments

In reference to the motion by Representative Dassinger made on February 28, 1979, that the Select Water Resources Committee of the Montana House have Representative Scully and James Sansaver re-draft S. 76 for review by the Committee, the following amendments are hereby submitted in writing as discussed with Mr. Scully on March 12, 1979.

On page 3, line 11, an amendment shall be inserted to read as follows, to-wit: Except any and all waters of the United States reserved for and on behalf of any Indian or Indian Tribe and providing that anything inconsistent herewith is superseded by this provision except there shall be an enabling process established by the State for resolving conflicting claims to the use of waters between the State and Tribe a compact process as more fully set forth below at Section 43.

(New Section 43) Legislature intent regarding Federal and Indian Water Rights--compact--negotiation authorized--procedure.

1. It is intended that the State of Montana proceed under the provisions of this section to conclude a compact for the equitable division and apportionment

of waters between the State and its people and the several Federal interests and Indian Tribes claiming reserved water rights within the State.

2. The compact commission may negotiate with the Federal Government and Indian Tribes jointly or severally to conclude a compact authorized under (subsection 1). When the compact commission and authorized representatives of the Federal Government or Indian Tribes have agreed to a compact, they shall sign a copy and file an original copy with the Attorney General of the United States of America and copies with Secretary of the State of Montana and if the compact is with an Indian Tribe with the Tribal Council of the Tribe involved. The compact is effective and binding upon all parties upon ratification by the Legislature of Montana, and effected Tribal Council, and the Congress of the United States. The Water Court shall include in the preliminary decree the contents of a compact that has been agreed upon by the parties to the compact whether or not it has been ratified by Congress.

3. A. There is created a reserved water rights compact commission. Commissioners are appointed as follows:

- I. Two members of the House of Representatives appointed by the Speaker, each from a different political party;

- II. Two members of the Senate appointed by the President, each from a different political party;
- III. One member designated by the Governor;
- IV. One member designated by the Attorney General; and
- V. One member from the Department of Natural Resources and Conservation designated by the Director.

B. Legislative members of the commission are entitled to receive compensation and expenses provided in MCA 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as State employees.

C. The commission is attached to the Governor's office for administrative purposes only. The cost of the commission shall be paid from funds appropriated for that purpose from the Water Rights adjudication account established in (Section 19).

D. Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

T

HOUSE SELECT COMMITTEE ON WATER

April 5, 1979

The meeting was called to order by Chairman Day at 11:15 a.m. with all members present except Representatives Dassinger, Hershel Robbins, and Roth, who was excused leaving her vote on the following issues.

Representative Scully began by stating that he had just spoke to Mr. Jim Sansaver from the Department of Interior, Washington. He said if the Indian's were included in SB 76, there would be federal litigation. His feeling was that he did not get his job done when he was here.

Representative Day expanded on the conversation stating that the cases were ready to be filed and this is the tribes stand not a threat. At the last meeting with the Indians they thought that we were indicating to down stream states that we had an excess of water by making them quantify their water.

Representative Curtiss stated that she did not feel they would have a hard and fast case until adjudication was done.

SENATE BILL NO. 76

Representative Scully moved the adoption of the subcommittees substitute bill.

He stated that he had explained the changes they made at yesterdays meeting and all that had been added was the section on federal and Indian reservations which was passed to be added at yesterdays meeting.

He said there was a conflict on the speedup process and there may be other changes, but we think the best way to deal with them would be in a conference committee with the Senators.

Representative Kemmis said he had some minor technical problems with the bill but they could be resolved in conference committee, also.

Representative Scully moved to exclude lines 2 through 6 on page 13. The motion was carried unanimously.

Representative Nathe questioned page 1, lines 10 through 12, on who would be on the committee.

Representative Scully stated that this had come up in the subcommittee and they could not come up with any better language but it meant the senior judges in that division.

Representative Day questioned page 1, lines 15 and 16, where it states that a district judge may not sit as a water judge in more than one division. There may be times where they may have to fill in for each other because of a disqualification or something.

Representative Kemmis stated that this problem could be addressed in the conference committee.

The motion to adopt the subcommittees substitute bill was carried unanimously.

Representative Hand moved, BE CONCORRED IN AS AMENDED. The motion was carried unanimously.

Representative Hand moved to let the staff attorney make any clerical changes that may be necessary in the substitute bill. The motion was carried unanimously.

HOUSE BILL NO. 745

Representative Day stated that this was the bill the committee requested to have referred to the Water Committee for consideration. He felt there should be a way to state that the oversight committee would be overseeing water adjudication.

Representative Kemmis moved the following amendments:

1. Title, line 5.
Following: "RESOURCES"
Insert: "AND ADJUDICATION"
2. Page 1, line 9.
Following: "resources"
Insert: "and adjudication"
3. Page 1, line 11.
Following: "resources"
Insert: "and adjudication"
4. Page 1, line 21.
Following: line 9
Insert: "(3) The committee shall oversee the implementation of the water rights adjudication system established by [Senate Bill #76] and may make recommendations to agencies, courts, and the legislature relating to water adjudication as it considers necessary. Such recommendations may include proposals for legislation."

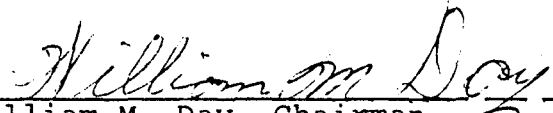
The motion was carried unanimously.

Representative Hand moved to include an immediate effective date. The motion was carried unanimously.

Representative Kemmis moved, DO PASS AS AMENDED. The motion was carried unanimously.

Minutes
April 5, 1979
Page 3

The meeting was adjourned at 11:55 a.m.



William M. Day, Chairman

Judy J. Mook, Secretary

FISCAL NOTE

Form BD-15

compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note
SB 76 (amended) pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to adjudicate claims of existing water rights in Montana.

ASSUMPTIONS:

275,000 claims will be filed over a four year period at the rate of \$40 per claim as follows:

1st year - 8,250	3rd year - 55,000
2nd year - 27,500	4th year - 184,250

The current adjudication program in the Powder River Basin will continue to July 1, 1980.

Ten percent of the claims will be checked. The Department of Natural Resources and Conservation (DNRC) will keypunch data and microfilm claims; copies of claims will be submitted to each district court.

Personal services costs will increase 6% each year.

The program in DNRC established to assist with adjudication will employ FTE employees as follows:

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
Gross FTEs needed	35	59	123	131	131	131
Current Adjudication staff available	0	6	6	6	6	6
Net FTEs needed	35	53	117	125	125	125

The Water Court will employ FTE employees as follows:

FY80 - 0 FTE	FY83 - 8 FTE
FY81 - 2 FTE	FY84 - 8 FTE
FY82 - 8 FTE	

Costs of DNRC in excess of revenues collected under the proposed legislation will be paid from the State General Fund.

Minimal costs will be incurred in FY1979 to designate the water judges.

The Department of Fish and Game will necessarily expand fisheries field and other operations to:

- document, determine, and make filing on waters traditionally used by the seven operating state fish hatcheries,
- file claims for water for instream purposes on 12 streams previously filed for in 1970 and 1971,
- undertake extensive studies to document and support the amount of instream water necessary to maintain the aquatic resources at the current level for the above-mentioned twelve streams,
- file claims on other waters where water rights were previously acquired or filed for instream purposes.

The Department of Fish and Game will generate revenues from federal and private sources to fund this expanded requirement.

The Department of State Lands will be required to inventory records, contact lessees, etc. to gather the necessary data to file claims. One additional FTE position and related operating expenses will be required. The additional cost to the Department of State Lands will be funded from the State General Fund.

Richard L. Tracy
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4/12/79

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 7-79 (am)

Form BD-

In compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note for SB 76 (amended) pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

FISCAL IMPACT:

	FY80	FY81
Revenue from proposed filing fees	\$ 330,000	\$1,100,000
Expenditures		
Department of Natural Resources		
Personal services	502,441	912,861
Operating expenses	195,300	214,600
Equipment	117,250	49,500
	<u>814,991</u>	<u>1,176,961</u>
Water Court		
Personal services	0	57,753
Operating expenses	10,000	10,200
Equipment	4,000	10,000
	<u>14,000</u>	<u>77,953</u>
Department of Fish and Game		
Personal services	121,800	135,000
Operating expenses	50,750	56,250
Equipment	30,450	33,750
	<u>203,000</u>	<u>225,000</u>
Department of State Lands		
Personal services	13,019	13,800
Operating expenses	7,745	6,775
	<u>20,764</u>	<u>20,575</u>
Total expenditures under proposed law	<u>1,052,755</u>	<u>1,500,489</u>
Excess of expenditures over revenues under proposed law	<u>722,755</u>	<u>400,489</u>
Less: Expenditures under current law		
Department of Natural Resources	<u>0</u>	<u>180,000</u>
Net additional cost of proposed legislation in FY81	<u>\$ 722,755</u>	<u>\$ 220,489</u>

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

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STATE OF MONTANA

REQUEST NO. 7-79 (amended)

FISCAL NOTE

Form BD-15

In compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note
SB 76 (amended) pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members
 of the Legislature upon request.

FISCAL IMPACT (contd):

The net cost will be absorbed from monies from the following:

	<u>FY80</u>	<u>FY81</u>
State General Fund	\$ 519,755	\$(4,511)
Other funds (Department of Fish and Game)	<u>203,000</u>	<u>225,000</u>
	<u>\$ 722,755</u>	<u>\$ 220,489</u>

LONG-TERM IMPACT:

The following reflects the estimated receipts and expenditures under the proposed legislation for the six fiscal years ending
 June 30, 1985:

	<u>FY80</u>	<u>FY81</u>	<u>FY82</u>	<u>FY83</u>	<u>FY84</u>	<u>FY85</u>	<u>Total</u>
Revenue from filing fees	\$ 330,000	\$1,100,000	\$2,200,000	\$7,370,000	\$ 0	\$ 0	\$11,000,000
Expenditures							
DNRC	814,991	1,176,961	2,459,191	3,131,552	3,016,052	3,011,252	13,609,999
Water Court	14,000	77,953	287,112	279,087	294,882	310,747	1,263,781
Fish and Game	243,000	269,000	267,000	60,000	0	0	839,000
State Lands	20,764	20,575	9,450	0	0	0	50,789
	<u>1,092,755</u>	<u>1,544,489</u>	<u>3,022,753</u>	<u>3,470,639</u>	<u>3,310,934</u>	<u>3,321,999</u>	<u>15,763,569</u>
Less: Expenditures under current law							
DNRC	0	180,000	180,000	180,000	180,000	180,000	900,000
Fish and Game	40,000	44,000	48,000	0	0	0	132,000
Total	<u>40,000</u>	<u>224,000</u>	<u>228,000</u>	<u>180,000</u>	<u>180,000</u>	<u>180,000</u>	<u>1,032,000</u>
Total additional expenditures	<u>1,052,755</u>	<u>1,320,489</u>	<u>2,794,753</u>	<u>3,290,639</u>	<u>3,130,934</u>	<u>3,141,999</u>	<u>14,731,569</u>
Net revenue or (expenditure)	<u>\$(722,755)</u>	<u>\$(220,489)</u>	<u>\$(594,753)</u>	<u>\$4,079,361</u>	<u>\$(3,130,934)</u>	<u>\$(3,141,999)</u>	<u>\$(3,731,569)</u>

The estimated cost per claim for 6 year program only is \$15,763,569 ÷ 275,000 expected claims = \$57 per claim.

LONG-TERM FUNDING INFORMATION:

Funding for the six year net cost of the proposed legislation will be provided as follows:

General Fund	\$ 519,755	\$(4,511)	\$ 375,753	\$(4,139,361)	\$3,130,934	\$3,141,999	\$ 3,024,569
Other funds	<u>203,000</u>	<u>225,000</u>	<u>219,000</u>	<u>60,000</u>	<u>0</u>	<u>0</u>	<u>707,000</u>
	<u>\$ 722,755</u>	<u>\$ 220,489</u>	<u>\$ 594,753</u>	<u>\$(4,079,361)</u>	<u>\$3,130,934</u>	<u>\$3,141,999</u>	<u>\$ 3,731,569</u>

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

271

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 7-79

Form B

In compliance with a written request received April 12, 19 79, there is hereby submitted a Fiscal Note for SB 76 (amended) pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

IMPACT BEYOND JUNE 30, 1985:

Program cost of \$3 million per year will continue at about the FY85 level of spending for the next 10 to 25 years for the courts and DNRC. Such spending would continue until all claims are adjudicated; then there will be yet some costs in administering the final decrees and keeping them updated.

The revenue collected through filing fees would be estimated to be spent by July 1985, and funds for the program would have to come from the general fund, additional fees, or other sources.

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

272

SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,

GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF
EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS ~~3-1-101~~
~~3-1-102~~, ~~3-1-103~~, ~~3-1-104~~, ~~3-1-105~~, ~~3-1-106~~, ~~3-1-107~~, ~~3-1-108~~, ~~3-1-109~~, ~~3-1-110~~, ~~3-1-111~~,
85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405,
AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH
85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Third Reading Bill

(Strike everything after the enacting clause and insert:)

NEW SECTION. Section 1. District court water
divisions -- water judges -- creation. (1) To adjudicate
existing water rights water divisions are established as
defined in [section 2]. A water division shall be presided
over by a water judge.

(2) A water judge shall be designated effective July
1, 1979, for each water division by a majority vote of a
committee composed of the senior judge in each judicial
district wholly or partly within the division. A water judge

must be a district judge of a judicial district wholly or
partly within the water division. A district judge may not
sit as a water judge in more than one division.

(3) No water judge may preside over matters concerning
the determination and interpretation of existing water
rights beyond the boundaries specified in [section 2] for
his division.

(4) A water judge, when presiding over a water
division, presides as district judge in and for each
judicial district wholly or partly within the water
division.

(5) The jurisdiction of each judicial district
concerning the determination and interpretation of existing
water rights is exercised exclusively by it through the
water division or water divisions that contain the judicial
district wholly or partly.

NEW SECTION. Section 2. Water divisions defined. (1)
There are four water divisions whose boundaries are formed
by the natural divides between drainages and the borders of
the state of Montana and which are described as follows:

(a) The Yellowstone River Basin water division
consists of those areas drained by the Yellowstone and
Little Missouri Rivers and any remaining areas in Carter
County.

(b) The Lower Missouri River Basin water division

consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(c) The Upper Missouri River Basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water judge shall preside over adjudication of an existing right, the question shall be settled by the water judges involved.

NEW SECTION. Section 3. Appointment of water masters -- qualifications -- removal. (1) The water judge in each water division shall appoint a water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge.

NEW SECTION. Section 4. Salary, expenses, and retirement of water masters. (1) The water judges shall set a uniform salary for water masters. Water masters shall

receive expenses as provided in 2-18-501 through 2-18-503.

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in [section 18].

NEW SECTION. Section 5. Duties of water masters. (1) The water master has the general powers given to a master by M.R.Civ.P., Rule 53(c).

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in [section 22].

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

NEW SECTION. Section 6. Jurisdiction of the water division. (1) When the department of natural resources and conservation files a copy of each statement of claim with the clerk of the district court as required by [section 11], the claim shall be considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district

1 of the county in which the use occurs.

2 (2) The water judge for each division shall exercise
3 jurisdiction over all matters concerning the determination
4 and interpretation of existing water rights within his
5 division as specified in [section 2] that are filed in a
6 judicial district wholly or partly within the division.

7 (3) The water judge may consolidate all matters
8 concerning the determination and interpretation of existing
9 water rights within the water judge's division in any
10 combination or groups of claims or matters for joint
11 hearings or proceedings conducted by the water judge or
12 water master in any location within the division. The water
13 judge may make such consolidations as are necessary to
14 administer the requirements of [this act] in adjudicating
15 claims of existing water rights.

16 (4) All matters concerning the determination and
17 interpretation of existing water rights shall be brought
18 before or immediately transferred to the water judge in the
19 proper water division unless witnesses have been sworn and
20 testimony has been taken by a district court prior to
21 October 1, 1979.

22 (5) The water judge of each water division may appoint
23 and supervise a water commissioner as provided for in Title
24 85, chapter 5.

25 (6) The water judge of each water division may enforce

1 the provisions of a final decree issued in that water
2 division as provided in [section 24].

3 NEW SECTION. Section 7. Disqualification of water
4 judges or water master. (1) A water judge may disqualify
5 himself or the water master in any proceeding or pertinent
6 portion thereof in which his or the water master's
7 impartiality might reasonably be questioned.

8 (2) A water judge may also disqualify himself or the
9 water master in the following circumstances:

10 (a) If he or the water master has a personal bias or
11 prejudice concerning a party of personal knowledge or
12 disputed evidentiary facts concerning the proceeding;

13 (b) If in private practice he or the water master
14 served as a lawyer in the matter in controversy or a lawyer
15 with whom he or the water master previously practiced law
16 served during such association as a lawyer concerning the
17 matter or the judge or the lawyer has been a material
18 witness concerning it;

19 (c) If he or the water master has served in
20 governmental employment and in such capacity participated as
21 counsel, adviser, or material witness concerning the
22 proceeding or expressed an opinion concerning the merits of
23 the particular case in controversy;

24 (d) If he or the water master knows that he or the
25 water master individually or as a fiduciary, or his or the

1 water master's spouse or minor child residing in his or the
2 water master's household has a financial interest in the
3 subject matter in controversy or in a party to the
4 proceeding or any other interest that could be substantially
5 affected by the outcome of the proceeding; or

6 (e) if he or the water master or his or the water
7 master's spouse or a person within the third degree of
8 relationship to any of them (as calculated according to
9 72-11-101 through 72-11-105) or the spouse of such a person:

10 (i) is a party to the proceeding or an officer,
11 director, or trustee of a party;

12 (ii) is known by the judge or water master to have an
13 interest that could be substantially affected by the outcome
14 of the proceeding;

15 (iii) is to the judge's or water master's knowledge
16 likely to be a material witness in the proceeding.

17 (3) A water judge should inform himself about his and
18 the water master's personal and fiduciary financial
19 interests and make a reasonable effort to inform himself
20 about the personal financial interests of his and the water
21 master's spouse and minor children residing in his or the
22 water master's respective household.

23 (4) For the purposes of this section the following
24 definitions apply:

25 (a) "Proceeding" includes prehearing, hearing,

1 appellate review, or other stages of adjudication conducted
2 by the water master or water judge.

3 (b) "Fiduciary" includes such relationships as
4 executor, administrator, trustee, or guardian.

5 (c) "Financial interest" means ownership of a legal or
6 equitable interest, however small, or a relationship as
7 director, advisor, or other active participant in the
8 affairs of a party, except that:

9 (i) ownership in a mutual or common investment fund
10 that holds securities is not a financial interest in such
11 securities unless the judge or water master participates in
12 the management of the fund;

13 (ii) an office in an educational, religious,
14 charitable, fraternal, or civic organization is not a
15 financial interest in securities held by the organization;

16 (iii) the proprietary interest of a policyholder in a
17 mutual insurance company or a depositor in a mutual savings
18 association or a similar proprietary interest is a financial
19 interest in the organization only if the outcome of the
20 proceeding could substantially affect the value of the
21 interest; and

22 (iv) ownership of government securities is a financial
23 interest in the issuer only if the outcome of the proceeding
24 could substantially affect the value of the securities.

25 (5) A water judge may accept from the parties to the

1 proceeding a waiver of any ground for disqualification if it
2 is preceded by a full disclosure on the record of the basis
3 for disqualification.

4 (6) The procedure for disqualification of a water
5 judge or water master specified in this section is exclusive
6 unless otherwise specifically altered by the Montana supreme
7 court.

8 NEW SECTION. Section 8. Designation of water judge to
9 fill vacancy. If a vacancy occurs, it shall be filled in the
10 manner provided in [section 1] for the initial designation
11 of a water judge. A vacancy is created when a water judge
12 dies, retires, is not elected to a subsequent term, or is
13 otherwise unable to complete his term as a district judge.

14 NEW SECTION. Section 9. Water judges -- term of
15 office. The term of office for water judges is from July 1,
16 1979, to June 30, 1985. After June 30, 1985, the term of
17 office of a water judge is 4 years, subject to continuation
18 of the water divisions by the legislature.

19 NEW SECTION. Section 10. Promulgation of rules and
20 prescription of forms. The Montana supreme court may
21 promulgate special rules of practice and procedure and shall
22 prescribe forms for use in connection with [this act] in
23 consultation with the water judge and the department.

24 NEW SECTION. Section 11. Claim of existing water
25 right -- filing statement of claim required -- exemptions.

1 (1) A person claiming an existing right, unless exempted
2 below, shall file with the department no later than June 30,
3 1983, a statement of claim for each water right asserted on
4 a form provided by the department.

5 (2) The department shall file a copy of each statement
6 of claim with the clerk of the district court for the
7 judicial district in which the diversion is made or, if
8 there is a claimed right with no diversion, the department
9 shall file a copy of the statement of claim with the clerk
10 of the district court of the judicial district in which the
11 use occurs.

12 (3) Claims for existing rights for livestock and
13 individual as opposed to municipal domestic uses based upon
14 instream flow or groundwater sources and claims for rights
15 in the Powder River Basin included in a declaration filed
16 pursuant to the order of the department or a district court
17 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
18 are exempt from the filing requirements of subsection (1) of
19 this section. Such claims may, however, be voluntarily
20 filed.

21 NEW SECTION. Section 12. Department of fish and game
22 to represent public recreational uses. The department of
23 fish and game shall exclusively represent the public for
24 purposes of establishing any prior and existing public
25 recreational use in existing right determinations under

[sections 11 through 26], provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26] and further provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

NEW SECTION. Section 13. Statement of claim -- contents. (1) The statement of claim for each right shall include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water and times of use claimed;
- (d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;
- (e) the purpose of use, including, if for irrigation, the number of acres irrigated;
- (f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The claimant shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

NEW SECTION. Section 14. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by [section 11] establishes a conclusive presumption of abandonment of that right.

NEW SECTION. Section 15. Claim to constitute prima facie evidence. A claim of an existing right filed in accordance with [section 11] constitutes prima facie proof of its content until the issuance of a final decree.

NEW SECTION. Section 16. Order to file claim. (1) The Montana supreme court shall on or before October 1, 1979, issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence

1 shall be printed in not less than 12-point boldface type.)
 2 This order is notice of commencement of procedures for the
 3 general adjudication of existing rights to the use of water
 4 and of the requirement to file a claim for certain existing
 5 rights to the use of water. Every person, including but not
 6 limited to an individual, partnership, association, public
 7 or private corporation, city or other municipality, county,
 8 state agency or the state of Montana, and federal agency of
 9 the United States of America, asserting a claim to an
 10 existing right to the use of water arising prior to July 1,
 11 1973, is ordered to file a statement of claim to that right
 12 with the department no later than June 30, 1983. Claims for
 13 stock and domestic uses based upon instream flow or
 14 groundwater sources are exempt from this requirement;
 15 however, claims for such uses may be voluntarily filed.
 16 Claims filed with the department in the Powder River Basin
 17 in a declaration filed pursuant to the order of the
 18 department of natural resources and conservation or a
 19 district court issued pursuant to sections 8 and 9 of
 20 Chapter 452, Laws of 1973, are also exempt.

21 For further information, contact the department of
 22 natural resources and conservation, Helena, Montana, for a
 23 copy of the law and an explanation of it."

24 (2) Upon petition of the attorney general, the Montana
 25 supreme court may issue the order called for in subsection

1 (1) with a shorter claim filing period of not less than 1
 2 year in those basins or subbasins where state adjudication
 3 jurisdiction is being or is likely to be challenged.

4 NEW SECTION. Section 17. How notice of the order to
 5 be given. To assure that all persons who may claim an
 6 existing water right are notified of the requirement to file
 7 a claim of that right, the Montana supreme court shall give
 8 notice of the order as follows:

9 (1) It shall cause the order printed in not less than
 10 10-point type to be placed in a prominent and conspicuous
 11 place in all daily newspapers of the state and in at least
 12 one newspaper published in each county of the state during
 13 the month of October 1979, and in April of 1980, 1981, 1982,
 14 and 1983.

15 (2) It shall cause the order in writing to be placed
 16 in a prominent and conspicuous location in each county
 17 courthouse in the state.

18 (3) It shall provide a sufficient number of copies of
 19 the order to the county treasurers before October 15, 1979,
 20 1980, 1981, and 1982, and the county treasurers shall
 21 enclose a copy of the order with each statement of property
 22 taxes mailed in 1979, 1980, 1981, and 1982. In the
 23 implementation of this subsection, the department shall
 24 provide reimbursement to each county treasurer for the
 25 reasonable additional costs incurred by the treasurer

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1 arising from the inclusion of the order required by this
2 section. The department shall be reimbursed for such costs
3 from the water right adjudication account created by
4 [section 18].

5 (4) It shall provide copies of the order in writing to
6 the press services with offices located in Helena during
7 July, 1979, and April of 1980, 1981, 1982, and 1983.

8 (5) It may also in its discretion give notice of the
9 order in any other manner that will carry out the purposes
10 of this section.

11 (6) It may also in its discretion order that the
12 department or the water judge assist the Montana supreme
13 court in the carrying out of this section.

14 NEW SECTION. Section 18. Fees special account
15 created. (1) Each claim filed under [section 11] shall be
16 accompanied by a filing fee in the amount of \$40, subject to
17 the following exceptions:

18 (a) the total filing fees for all claims filed by one
19 person in any one water court district may not exceed \$480;
20 and

21 (b) no filing fee is required accompanying a claim of
22 an existing right that is included in a decree of a court in
23 the state of Montana and which is accompanied by a certified
24 copy of that decree or pertinent portion thereof or verified
25 as otherwise ordered by the court.

1 (2) There is established a water right adjudication
2 account in the earmarked revenue fund of the state treasury.
3 All fees collected under this section and [section 22] shall
4 be deposited in the account to pay the expenses incurred by
5 the state for administering [this act].

6 NEW SECTION. Section 19. Expenses to be borne by
7 state. All expenses incurred by the state as a result of
8 [this act] are to be paid from the water right adjudication
9 account in the earmarked revenue fund established in
10 [section 18]. Expenses include but are not limited to the
11 salaries and expenses of personnel, equipment, office space,
12 and other necessities incurred in administering [this act].
13 If sufficient revenue is not available from the earmarked
14 revenue fund, the expense shall be paid from the state's
15 general fund.

16 NEW SECTION. Section 20. Adjudication of existing
17 rights. (1) The state of Montana upon relation of the
18 attorney general shall petition the Montana supreme court to
19 require all persons claiming a right within a water division
20 to file a claim of the right as provided in [section 11].

21 (2) The requirement to file a claim for an existing
22 right is the first step in proceedings for the general
23 adjudication of all existing rights to the use of water.

24 (3) The water judge shall monitor the claim filing
25 procedure for claims within his water division and make any

orders necessary to assure timely and accurate compliance with the claim filing procedure.

NEW SECTION. Section 21. Department assistance to water judges. The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division:

(1) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by [section 11];

(3) conduct field investigations of randomly selected claims or claims that the water judge in consultation with the department determines warrant investigation; and

(4) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

NEW SECTION. Section 22. Preliminary decree. (1) Within a reasonable time after the close of the filing period, the water judge shall issue a preliminary decree. The preliminary decree shall be based on the statements of claim before the water judge, the data submitted by the

department, and any additional data obtained by the water judge.

(2) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under [section 24].

(3) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (2), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

(4) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right, or, in the Powder River Basin, to each person who has filed a declaration of existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been

1 denied a beneficial water use permit pursuant to 85-2-301,
 2 those granted a reservation pursuant to 85-2-316, or other
 3 interested persons who request service of the notice from
 4 the water judge. The clerk or person designated by the
 5 water judge to mail the notice shall make a general
 6 certificate of mailing certifying that a copy of the notice
 7 has been placed in the United States mail, postage prepaid,
 8 addressed to each party required to be served notice of the
 9 preliminary decree. Such certificate shall be conclusive
 10 evidence of due and legal notice of entry of decree.

11 (5) Any person may obtain a copy of the preliminary
 12 decree upon payment of a fee of \$20 or the cost of printing,
 13 whichever is greater, to the water judge.

14 NEW SECTION. Section 23. Hearing on preliminary
 15 decree. (1) Upon objection to the preliminary decree by the
 16 department, a person named in the preliminary decree, or any
 17 other person, for good cause shown, the department or such
 18 person is entitled to a hearing thereon before the water
 19 judge.

20 (2) If a hearing is requested, such request must be
 21 filed with the water judge within 90 days after notice of
 22 entry of the preliminary decree. The water judge may, for
 23 good cause shown, extend this time limit an additional 30
 24 days if application for the extension is made within 90 days
 25 after notice of entry of the preliminary decree.

1 (3) The request for a hearing shall contain a precise
 2 statement of the findings and conclusions in the preliminary
 3 decree with which the department or person requesting the
 4 hearing disagrees. The request shall specify the paragraphs
 5 and pages containing the findings and conclusions to which
 6 objection is made. The request shall state the specific
 7 grounds and evidence on which the objections are based.

8 (4) Upon expiration of the time for filing objections
 9 and upon timely receipt of a request for a hearing, the
 10 water judge shall notify each party named in the preliminary
 11 decree that a hearing has been requested. The water judge
 12 shall fix a day when all parties who wish to participate in
 13 future proceedings must appear or file a statement. The
 14 water judge shall then set a date for a hearing. The water
 15 judge may conduct individual or consolidated hearings. A
 16 hearing shall be conducted as for other civil actions. At
 17 the order of the water judge a hearing may be conducted by
 18 the water master, who shall prepare a report of the hearing
 19 as provided in M.R.Civ.P., Rule 53(e).

20 NEW SECTION. Section 24. Final decree. (1) The water
 21 judge shall, on the basis of the preliminary decree and on
 22 the basis of any hearing that may have been held, enter a
 23 final decree affirming or modifying the preliminary decree.
 24 If no request for a hearing is filed within the time
 25 allowed, the preliminary decree automatically becomes final,

1 and the water judge shall enter it as the final decree.

2 (2) The final decree shall establish the existing
3 rights and priorities within the water judge's jurisdiction
4 of persons required by [section 11] to file a claim for an
5 existing right and of persons required to file a declaration
6 of existing rights in the Powder River Basin pursuant to an
7 order of the department or a district court issued under
8 sections 8 and 9 of Chapter 452, Laws of 1973.

9 (3) The final decree shall state the findings of fact,
10 along with any conclusions of law, upon which the existing
11 rights and priorities of each person named in the decree are
12 based.

13 (4) For each person who is found to have an existing
14 right, the final decree shall state:

15 (a) the name and post-office address of the owner of
16 the right;

17 (b) the amount of water, rate, and volume, included in
18 the right;

19 (c) the date of priority of the right;

20 (d) the purpose for which the water included in the
21 right is used;

22 (e) the place of use and a description of the land, if
23 any, to which the right is appurtenant;

24 (f) the source of the water included in the right;

25 (g) the place and means of diversion;

1 (h) the inclusive dates during which the water is used
2 each year;

3 (i) any other information necessary to fully define
4 the nature and extent of the right.

5 **NEW SECTION.** Section 25. Appeals from final decree.
6 A person whose existing rights and priorities are determined
7 in the final decree may appeal the determination only if:

8 (1) he requested a hearing and appeared and entered
9 objections to the preliminary decree; or

10 (2) his rights as determined in the preliminary decree
11 were altered as the result of a hearing requested by another
12 person.

13 **NEW SECTION.** Section 26. Certificate of water right.
14 When a final decree is entered, the water judge shall send a
15 copy to the department. The department shall on the basis of
16 the final decree issue a certificate of water right to each
17 person decreed an existing right. The original of the
18 certificate shall be sent to the county clerk and recorder
19 of the county where the point of diversion or place of use
20 is located for recordation. The department shall keep a copy
21 of the certificate in its office in Helena. After
22 recordation, the clerk and recorder shall send the
23 certificate to the person to whom the right is decreed.

24 **NEW SECTION.** Section 27. Legislative intent regarding
25 federal and Indian water rights -- compacts -- negotiation

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1 authorized -- procedure. (1) It is the intent of the
 2 legislature that the attorney general include all federal
 3 and Indian interests in the petition required in [section
 4 16] under authority granted the state by 43 U.S.C. 666.
 5 However, it is further intended that the state of Montana
 6 proceed under the provisions of this section to conclude
 7 compacts for the equitable division and apportionment of
 8 waters between the state and its people and the several
 9 federal interests and Indian tribes claiming reserved water
 10 rights within the state. During the 3-year period from the
 11 time of filing the petition required in [section 16], and
 12 while negotiations for the conclusion of a compact under
 13 this section are being pursued, all actions to adjudicate
 14 reserved federal and Indian water rights under [this act]
 15 are suspended.

16 (2) The compact commission may negotiate with the
 17 federal government and Indian tribes jointly or severally to
 18 conclude compacts authorized under subsection (1). When the
 19 compact commission and authorized representatives of the
 20 federal government or Indian tribes have agreed to a
 21 compact, they shall sign a copy and file an original copy
 22 with the department of state of the United States of America
 23 and copies with the secretary of state of Montana and if the
 24 compact is with an Indian tribe, with the tribal council for
 25 the tribe involved. The compact is effective and binding

1 upon all parties upon ratification by the legislature of
 2 Montana, any affected tribal council, and the congress of
 3 the United States. The water judge shall include in the
 4 preliminary decree the contents of a compact that has been
 5 agreed upon by the parties to the compact whether or not it
 6 has been ratified by congress.

7 (3) (a) There is created a reserved water rights
 8 compact commission. Commissioners are appointed as follows:

9 (i) two members of the house of representatives
 10 appointed by the speaker, each from a different political
 11 party;

12 (ii) two members of the senate appointed by the
 13 president, each from a different political party;

14 (iii) one member designated by the governor;

15 (iv) one member designated by the attorney general; and

16 (v) one member from the department of natural
 17 resources and conservation designated by the director.

18 (b) Legislative members of the commission are entitled
 19 to receive compensation and expenses as provided in 5-2-301
 20 for each day actually spent on commission business. Other
 21 members are entitled to salary and expenses as state
 22 employees.

23 (c) The commission is attached to the governor's
 24 office for administrative purposes only. The costs of the
 25 commission shall be paid from funds appropriated for that

purpose from the water right adjudication account established in [section 19].

(d) Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

Section 28. Section 3-5-111, MCA, is amended to read:

"3-5-111. District courts presided over by judges of other districts. A judge of the district court of any judicial district may hold the district court in any county of another district than his own at the request of the judge thereof or as otherwise provided by law. Upon the request of the governor, it is his duty to do so. In either case the judge holding the court has the same power either in court or chambers as a judge thereof."

Section 29. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock

water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means ~~the~~ a certificate of water right issued by the department ~~under--85-2-210--subsections (1)-and-(2)-of-85-2-306--and-85-2-315.~~

(5) "Declaration" means the declaration of an existing right filed with the department under 85-2-203 section 8, Chapter 452, Laws of 1973.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(8) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(9) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306

1 through 85-2-314.

2 (10) "Person" means an individual, association,
3 partnership, corporation, state agency, political
4 subdivision, the United States or any agency thereof, or any
5 other entity.

6 (11) "Political subdivision" means any county,
7 incorporated city or town, public corporation, or district
8 created pursuant to state law or other public body of the
9 state empowered to appropriate water but not a private
10 corporation, association, or group.

11 (12) "Senior judge in each judicial district" means
12 the judge in the district who has served, with or without
13 interruption, for the longest period of time.

14 (12)(13) "Waste" means the unreasonable loss of water
15 through the design or negligent operation of an
16 appropriation or water distribution facility or the
17 application of water to anything but a beneficial use.

18 (13)(14) "Water" means all water of the state, surface
19 and subsurface, regardless of its character or manner of
20 occurrence, including geothermal water and diffuse surface
21 water.

22 (15) "Water division" means a drainage basin as defined
23 in [section 2].

24 (16) "Water judge" means a judge as provided for in
25 [sections 1 through 10].

1 (17) "Water master" means a master as provided for in
2 [sections 1 through 10].

3 (14)(18) "Well" means any artificial opening or
4 excavation in the ground, however made, by which groundwater
5 is sought or can be obtained or through which it flows under
6 natural pressures or is artificially withdrawn."

7 Section 30. Section 85-2-112, MCA, is amended to read:

8 "85-2-112. Department duties. The department shall:

9 (1) enforce and administer this chapter and rules
10 adopted by the board under 85-2-113;

11 (2) prescribe procedures, forms, and requirements for
12 applications, permits, certificates, declarations, claims of
13 existing rights, and proceedings under this chapter and
14 prescribe the information to be contained in any
15 application, declaration, claim of existing right, or other
16 document to be filed with the department under this chapter
17 not inconsistent with the requirements of this chapter;

18 (3) establish and keep in its Helena office a
19 centralized record system of all existing rights and a
20 public record of permits, certificates, declarations, claims
21 of existing rights, applications, and other documents filed
22 in its office under this chapter;

23 (4) cooperate with, assist, advise, and coordinate
24 plans and activities with the federal, state, and local
25 agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department ~~or claims of existing rights with a district court~~ under this chapter."

Section 31. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for ~~any action taken by the department at the request of the water judge or for~~ the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 32. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court ~~supervising the distribution of water among appropriators from the source~~ to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to

1 cease and desist from doing so and to take such steps as may
2 be necessary to remedy the waste, unlawful use, or
3 interference.

4 (2) The department may attach to the controlling works
5 a written notice, properly dated and signed, setting forth
6 the fact that the controlling works have been properly
7 regulated by it, which notice shall be legal notice to all
8 persons interested in the appropriation or distribution of
9 the water.

10 (3) The department may also direct its own attorney or
11 request the attorney general or county attorney to bring
12 suit to enjoin such waste, unlawful use, or interference."

13 Section 33. Section 85-2-401, MCA, is amended to read:

14 "85-2-401. Priority. (1) As between appropriators, the
15 first in time is the first in right. Priority of
16 appropriation does not include the right to prevent changes
17 by later appropriators in the condition of water occurrence,
18 such as the increase or decrease of streamflow or the
19 lowering of a water table, artesian pressure, or water
20 level, if the prior appropriator can reasonably exercise his
21 water right under the changed conditions.

22 (2) Priority of appropriation made under this chapter
23 dates from the filing of an application for a permit with
24 the department, except as otherwise provided in 85-2-301
25 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

1 (3) Priority of appropriation perfected before July 1,
2 1973, shall be determined as provided in 85-2-201--through
3 85-2-210 part 2 of this chapter."

4 Section 34. Section 85-2-406, MCA, is amended to read:

5 "85-2-406. District court supervision of water
6 distribution. (1) The district courts shall supervise the
7 distribution of water among all appropriators. This
8 supervisory authority includes the supervision of all water
9 commissioners appointed prior or subsequent to July 1, 1973.
10 The supervision shall be governed by the principle that
11 first in time is first in right.

12 (2) When a water distribution controversy arises upon
13 a source of water in which existing rights have not been
14 determined according to 85-2-201--through-85-2-210 part 2 of
15 this chapter, any party to the controversy may petition the
16 district court for relief. ~~The department--shall--be--served~~
17 ~~with--process--in--any--proceeding--under--this--subsection--and~~
18 ~~shall--within--a--reasonable--time--thereafter--notify--the--court~~
19 ~~whether--it--intends--in--its--discretion--within--a--reasonable~~
20 ~~time--to--begin--proceedings--to--determine--existing--rights--in~~
21 ~~the--source--in--accordance--with--part--2--of--this--chapter--The~~
22 ~~department--may--if--it--declines--to--commence--proceedings--to~~
23 ~~determine--existing--rights--in--the--source--intervene--as--a~~
24 ~~party--in--the--proceedings.~~ The district court from which
25 relief is sought may grant such injunctive or other relief

1 which is necessary and appropriate to preserve property
 2 rights or the status quo pending the department's decision
 3 whether to determine existing rights in the source or the
 4 department's decision to intervene as a party, as the case
 5 may be, if the department does not proceed to obtain a
 6 determination of existing rights, the district court shall
 7 settle only the controversy between the parties issuance of
 8 the final decree.

9 (3) A controversy between appropriators from a source
 10 which has been the subject of a general determination of
 11 existing rights under 85-2-201 through 85-2-210 part 2 of
 12 this chapter shall be settled by the district court which
 13 issued the final decree. The order of the district court
 14 settling the controversy may not alter the existing rights
 15 and priorities established in the final decree. In cases
 16 involving permits issued by the department, the court may
 17 not amend the respective rights established in the permits
 18 or alter any terms of the permits unless the permits are
 19 inconsistent or interfere with rights and priorities
 20 established in the final decree. The order settling the
 21 controversy shall be appended to the final decree, and a
 22 copy shall be filed with the department. The department
 23 shall be served with process in any proceeding under this
 24 subsection, and the department may, in its discretion,
 25 intervene in the proceeding."

1 Section 35. Codification. (1) Sections 1 through 10 of
 2 this act are intended to be codified as an integral part of
 3 Title 3, and the provisions contained in Title 3 apply to
 4 this act.

5 (2) Sections 11 through 27 are intended to be codified
 6 as an integral part of Title 85, chapter 2, part 2, and the
 7 provisions contained in Title 85, chapter 2, apply to this
 8 act.

9 (3) If the provisions of this act are not codified as
 10 stated above, the code commissioner shall add to the MCA, if
 11 necessary, statutory language to convey the intent of this
 12 section.

13 Section 36. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

19 Section 37. Repealer. Sections 85-2-201 through
 20 85-2-210, MCA, are repealed.

21 Section 38. Effective date. This act is effective on
 22 passage and approval.

-End-

HOUSE OF REPRESENTATIVES
Select Committee on Water
Committee Amendments

1. Title, line 8.
Following: "SECTIONS"
Strike: "3-1-101, 3-1-102, 3-1-1001, 3-1-1010, 19-5-301, 19-5-404"
Insert: "3-5-111,"

2. Title, line 10.
Strike: "85-2-405"

3. Pages 1 through 32.
Strike: all of the bill following the enacting clause
Insert: the attached substitute bill

17 **NEW SECTION.** Section 1. District court water
18 divisions -- water judges -- creation. (1) To adjudicate
19 existing water rights water divisions are established as
20 defined in [section 2]. A water division shall be presided
21 over by a water judge.
22 (2) A water judge shall be designated effective July
23 1, 1979, for each water division by a majority vote of a
24 committee composed of the senior judge in each judicial
25 district wholly or partly within the division. A water judge

1 must be a district judge of a judicial district wholly or
2 partly within the water division. A district judge may not
3 sit as a water judge in more than one division.

4 (3) No water judge may preside over matters concerning
5 the determination and interpretation of existing water
6 rights beyond the boundaries specified in [section 2] for
7 his division.

8 (4) A water judge, when presiding over a water
9 division, presides as district judge in and for each
10 judicial district wholly or partly within the water
11 division.

12 (5) The jurisdiction of each judicial district
13 concerning the determination and interpretation of existing
14 water rights is exercised exclusively by it through the
15 water division or water divisions that contain the judicial
16 district wholly or partly.

17 **NEW SECTION.** Section 2. Water divisions defined. (1)
18 There are four water divisions whose boundaries are formed
19 by the natural divides between drainages and the borders of
20 the state of Montana and which are described as follows:

21 (a) The Yellowstone River Basin water division
22 consists of those areas drained by the Yellowstone and
23 Little Missouri Rivers and any remaining areas in Carter
24 County.

25 (b) The Lower Missouri River Basin water division

1 consists of those areas drained by the Missouri River from
2 below the mouth of the Marias River and any remaining areas
3 in Glacier and Sheridan Counties.

4 (c) The Upper Missouri River Basin water division
5 consists of those areas drained by the Missouri River to
6 below the mouth of the Marias River.

7 (d) The Clark Fork River Basin water division consists
8 of the areas drained by the Clark Fork River, the Kootenai
9 River, and any remaining areas in Lincoln County.

10 (2) Whenever a question arises concerning which water
11 judge shall preside over adjudication of an existing right,
12 the question shall be settled by the water judges involved.

13 NEW SECTION. Section 3. Appointment of water masters
14 -- qualifications -- removal. (1) The water judge in each
15 water division shall appoint a water master.

16 (2) A water master may be appointed after July 1,
17 1980, and must be appointed on or before July 1, 1982.

18 (3) In appointing a water master, the water judge
19 shall consider a potential master's experience with water
20 law, water use, and water rights.

21 (4) A water master shall serve at the pleasure of the
22 water judge and may be removed by the water judge.

23 NEW SECTION. Section 4. Salary, expenses, and
24 retirement of water masters. (1) The water judges shall set
25 a uniform salary for water masters. Water masters shall

1 receive expenses as provided in 2-18-501 through 2-18-503.

2 (2) A water master shall participate in the Montana
3 Public Employees' Retirement System established in Title 19,
4 chapter 3.

5 (3) The salary and expenses of a water master shall be
6 paid from the water right adjudication account established
7 in [section 18].

8 NEW SECTION. Section 5. Duties of water masters. (1)
9 The water master has the general powers given to a master by
10 M.R.Civ.P., Rule 53(c).

11 (2) Within a reasonable time after June 30, 1983, the
12 water master shall issue a report to the water judge meeting
13 the requirements for the preliminary decree as specified in
14 [section 22].

15 (3) After a water judge issues a preliminary decree,
16 the water master shall assist the water judge in the
17 performance of the water division's further duties as
18 ordered by the water judge.

19 NEW SECTION. Section 6. Jurisdiction of the water
20 division. (1) When the department of natural resources and
21 conservation files a copy of each statement of claim with
22 the clerk of the district court as required by [section 11],
23 the claim shall be considered filed in the judicial district
24 of the county in which the diversion is made or, if there is
25 a claimed right with no diversion, in the judicial district

1 of the county in which the use occurs.

2 (2) The water judge for each division shall exercise
3 jurisdiction over all matters concerning the determination
4 and interpretation of existing water rights within his
5 division as specified in [section 2] that are filed in a
6 judicial district wholly or partly within the division.

7 (3) The water judge may consolidate all matters
8 concerning the determination and interpretation of existing
9 water rights within the water judge's division in any
10 combination or groups of claims or matters for joint
11 hearings or proceedings conducted by the water judge or
12 water master in any location within the division. The water
13 judge may make such consolidations as are necessary to
14 administer the requirements of [this act] in adjudicating
15 claims of existing water rights.

16 (4) All matters concerning the determination and
17 interpretation of existing water rights shall be brought
18 before or immediately transferred to the water judge in the
19 proper water division unless witnesses have been sworn and
20 testimony has been taken by a district court prior to
21 October 1, 1979.

22 (5) The water judge of each water division may appoint
23 and supervise a water commissioner as provided for in Title
24 85, chapter 5.

25 (6) The water judge of each water division may enforce

1 the provisions of a final decree issued in that water
2 division as provided in [section 24].

3 NEW SECTION. Section 7. Disqualification of water
4 judges or water master. (1) A water judge may disqualify
5 himself or the water master in any proceeding or pertinent
6 portion thereof in which his or the water master's
7 impartiality might reasonably be questioned.

8 (2) A water judge may also disqualify himself or the
9 water master in the following circumstances:

10 (a) If he or the water master has a personal bias or
11 prejudice concerning a party of personal knowledge or
12 disputed evidentiary facts concerning the proceeding;

13 (b) If in private practice he or the water master
14 served as a lawyer in the matter in controversy or a lawyer
15 with whom he or the water master previously practiced law
16 served during such association as a lawyer concerning the
17 matter or the judge or the lawyer has been a material
18 witness concerning it;

19 (c) If he or the water master has served in
20 governmental employment and in such capacity participated as
21 counsel, adviser, or material witness concerning the
22 proceeding or expressed an opinion concerning the merits of
23 the particular case in controversy;

24 (d) If he or the water master knows that he or the
25 water master individually or as a fiduciary, or his or the

1 water master's spouse or minor child residing in his or the
2 water master's household has a financial interest in the
3 subject matter in controversy or in a party to the
4 proceeding or any other interest that could be substantially
5 affected by the outcome of the proceedings; or

6 (e) if he or the water master or his or the water
7 master's spouse or a person within the third degree of
8 relationship to any of them (as calculated according to
9 72-11-101 through 72-11-105) or the spouse of such a person;

10 (i) is a party to the proceeding or an officer,
11 director, or trustee of a party;

12 (ii) is known by the judge or water master to have an
13 interest that could be substantially affected by the outcome
14 of the proceeding;

15 (iii) is to the judge's or water master's knowledge
16 likely to be a material witness in the proceeding.

17 (3) A water judge should inform himself about his and
18 the water master's personal and fiduciary financial
19 interests and make a reasonable effort to inform himself
20 about the personal financial interests of his and the water
21 master's spouse and minor children residing in his or the
22 water master's respective household.

23 (4) For the purposes of this section the following
24 definitions apply:

25 (a) "Proceeding" includes prehearing, hearing,

1 appellate review, or other stages of adjudication conducted
2 by the water master or water judge.

3 (b) "Fiduciary" includes such relationships as
4 executor, administrator, trustee, or guardian.

5 (c) "Financial interest" means ownership of a legal or
6 equitable interest, however small, or a relationship as
7 director, advisor, or other active participant in the
8 affairs of a party, except that:

9 (i) ownership in a mutual or common investment fund
10 that holds securities is not a financial interest in such
11 securities unless the judge or water master participates in
12 the management of the fund;

13 (ii) an office in an educational, religious,
14 charitable, fraternal, or civic organization is not a
15 financial interest in securities held by the organization;

16 (iii) the proprietary interest of a policyholder in a
17 mutual insurance company or a depositor in a mutual savings
18 association or a similar proprietary interest is a financial
19 interest in the organization only if the outcome of the
20 proceeding could substantially affect the value of the
21 interest; and

22 (iv) ownership of government securities is a financial
23 interest in the issuer only if the outcome of the proceeding
24 could substantially affect the value of the securities.

25 (5) A water judge may accept from the parties to the

1 proceeding a waiver of any ground for disqualification if it
2 is preceded by a full disclosure on the record of the basis
3 for disqualification.

4 (6) The procedure for disqualification of a water
5 judge or water master specified in this section is exclusive
6 unless otherwise specifically altered by the Montana supreme
7 court.

8 NEW_SECTION. Section 8. Designation of water judge to
9 fill vacancy. If a vacancy occurs, it shall be filled in the
10 manner provided in [section 1] for the initial designation
11 of a water judge. A vacancy is created when a water judge
12 dies, retires, is not elected to a subsequent term, or is
13 otherwise unable to complete his term as a district judge.

14 NEW_SECTION. Section 9. Water judges — term of
15 office. The term of office for water judges is from July 1,
16 1979, to June 30, 1985. After June 30, 1985, the term of
17 office of a water judge is 4 years, subject to continuation
18 of the water divisions by the legislature.

19 NEW_SECTION. Section 10. Promulgation of rules and
20 prescription of forms. The Montana supreme court may
21 promulgate special rules of practice and procedure and shall
22 prescribe forms for use in connection with [this act] in
23 consultation with the water judge and the department.

24 NEW_SECTION. Section 11. Claim of existing water
25 right -- filing statement of claim required -- exemptions.

1 (1) A person claiming an existing right, unless exempted
2 below, shall file with the department no later than June 30,
3 1983, a statement of claim for each water right asserted on
4 a form provided by the department.

5 (2) The department shall file a copy of each statement
6 of claim with the clerk of the district court for the
7 judicial district in which the diversion is made or, if
8 there is a claimed right with no diversion, the department
9 shall file a copy of the statement of claim with the clerk
10 of the district court of the judicial district in which the
11 use occurs.

12 (3) Claims for existing rights for livestock and
13 individual as opposed to municipal domestic uses based upon
14 instream flow or groundwater sources and claims for rights
15 in the Powder River Basin included in a declaration filed
16 pursuant to the order of the department or a district court
17 issued under sections 8 and 9 of Chapter 452, Laws of 1973,
18 are exempt from the filing requirements of subsection (1) of
19 this section. Such claims may, however, be voluntarily
20 filed.

21 NEW_SECTION. Section 12. Department of fish and game
22 to represent public recreational uses. The department of
23 fish and game shall exclusively represent the public for
24 purposes of establishing any prior and existing public
25 recreational use in existing right determinations under

1 [sections 11 through 26], provided that the foregoing shall
 2 not exclude a federal governmental entity from representing
 3 the public for the purpose of establishing any prior and
 4 existing public recreational use in existing right
 5 determinations under [sections 11 through 26] and further
 6 provided that the foregoing shall not be construed in any
 7 manner as a legislative determination of whether or not a
 8 recreational use sought to be established prior to July 1,
 9 1973, is or was a beneficial use.

10 NEW SECTION Section 13. Statement of claim --
 11 contents. (1) The statement of claim for each right shall
 12 include substantially the following:

- 13 (a) the name and mailing address of the claimant;
- 14 (b) the name of the watercourse or water source from
 15 which the right to divert or make use of water is claimed,
 16 if available;
- 17 (c) the quantities of water and times of use claimed;
- 18 (d) the legal description, with reasonable certainty,
 19 of the point or points of diversion and places of use of
 20 waters;
- 21 (e) the purpose of use, including, if for irrigation,
 22 the number of acres irrigated;
- 23 (f) the approximate dates of first putting water to
 24 beneficial use for the various amounts and times claimed in
 25 subsection (c); and

1 (g) the sworn statement that the claim set forth is
 2 true and correct to the best of claimant's knowledge and
 3 belief.

4 (2) The claimant shall submit maps, plats, aerial
 5 photographs, decrees, or pertinent portions thereof, or
 6 other evidence in support of his claim. All maps, plats, or
 7 aerial photographs should show as nearly as possible to
 8 scale the point of diversion, place of use, place of
 9 storage, and other pertinent conveyance facilities.

10 NEW SECTION Section 14. Abandonment by failure to
 11 file claim. The failure to file a claim of an existing right
 12 as required by [section 11] establishes a conclusive
 13 presumption of abandonment of that right.

14 NEW SECTION Section 15. Claim to constitute prima
 15 facie evidence. A claim of an existing right filed in
 16 accordance with [section 11] constitutes prima facie proof
 17 of its content until the issuance of a final decree.

18 NEW SECTION Section 16. Order to file claim. (1) The
 19 Montana supreme court shall on or before October 1, 1979,
 20 issue an order to file a statement of a claim of an existing
 21 water right in substantially the following form:

22 "WATER RIGHTS ORDER

23 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
 24 IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
 25 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence

1 shall be printed in not less than 12-point boldface type.)
 2 This order is notice of commencement of procedures for the
 3 general adjudication of existing rights to the use of water
 4 and of the requirement to file a claim for certain existing
 5 rights to the use of water. Every person, including but not
 6 limited to an individual, partnership, association, public
 7 or private corporation, city or other municipality, county,
 8 state agency or the state of Montana, and federal agency of
 9 the United States of America, asserting a claim to an
 10 existing right to the use of water arising prior to July 1,
 11 1973, is ordered to file a statement of claim to that right
 12 with the department no later than June 30, 1983. Claims for
 13 stock and domestic uses based upon instream flow or
 14 groundwater sources are exempt from this requirement;
 15 however, claims for such uses may be voluntarily filed.
 16 Claims filed with the department in the Powder River Basin
 17 in a declaration filed pursuant to the order of the
 18 department of natural resources and conservation or a
 19 district court issued pursuant to sections 8 and 9 of
 20 Chapter 452, Laws of 1973, are also exempt.

21 For further information, contact the department of
 22 natural resources and conservation, Helena, Montana, for a
 23 copy of the law and an explanation of it."

24 (2) Upon petition of the attorney general, the Montana
 25 supreme court may issue the order called for in subsection

1 (1) with a shorter claim filing period of not less than 1
 2 year in those basins or subbasins where state adjudication
 3 jurisdiction is being or is likely to be challenged.

4 ~~NEW SECTION.~~ Section 17. How notice of the order to
 5 be given. To assure that all persons who may claim on
 6 existing water right are notified of the requirement to file
 7 a claim of that right, the Montana supreme court shall give
 8 notice of the order as follows:

9 (1) It shall cause the order printed in not less than
 10 10-point type to be placed in a prominent and conspicuous
 11 place in all daily newspapers of the state and in at least
 12 one newspaper published in each county of the state during
 13 the month of October 1979, and in April of 1980, 1981, 1982,
 14 and 1983.

15 (2) It shall cause the order in writing to be placed
 16 in a prominent and conspicuous location in each county
 17 courthouse in the state.

18 (3) It shall provide a sufficient number of copies of
 19 the order to the county treasurers before October 15, 1979,
 20 1980, 1981, and 1982, and the county treasurers shall
 21 enclose a copy of the order with each statement of property
 22 taxes mailed in 1979, 1980, 1981, and 1982. In the
 23 implementation of this subsection, the department shall
 24 provide reimbursement to each county treasurer for the
 25 reasonable additional costs incurred by the treasurer

1 arising from the inclusion of the order required by this
2 section. The department shall be reimbursed for such costs
3 from the water right adjudication account created by
4 [section 18].

5 (4) It shall provide copies of the order in writing to
6 the press services with offices located in Helena during
7 July, 1979, and April of 1980, 1981, 1982, and 1983.

8 (5) It may also in its discretion give notice of the
9 order in any other manner that will carry out the purposes
10 of this section.

11 (6) It may also in its discretion order that the
12 department or the water judge assist the Montana supreme
13 court in the carrying out of this section.

14 NEW SECTION. Section 18. Fees special account
15 created. (1) Each claim filed under [section 11] shall be
16 accompanied by a filing fee in the amount of \$40, subject to
17 the following exceptions:

18 (a) the total filing fees for all claims filed by one
19 person in any one water court district may not exceed \$400;
20 and

21 (b) no filing fee is required accompanying a claim of
22 an existing right that is included in a decree of a court in
23 the state of Montana and which is accompanied by a certified
24 copy of that decree or pertinent portion thereof or verified
25 as otherwise ordered by the court.

1 (2) There is established a water right adjudication
2 account in the earmarked revenue fund of the state treasury.
3 All fees collected under this section and [section 22] shall
4 be deposited in the account to pay the expenses incurred by
5 the state for administering [this act].

6 NEW SECTION. Section 19. Expenses to be borne by
7 state. All expenses incurred by the state as a result of
8 [this act] are to be paid from the water right adjudication
9 account in the earmarked revenue fund established in
10 [section 18]. Expenses include but are not limited to the
11 salaries and expenses of personnel, equipment, office space,
12 and other necessities incurred in administering [this act].
13 If sufficient revenue is not available from the earmarked
14 revenue fund, the expense shall be paid from the state's
15 general fund.

16 NEW SECTION. Section 20. Adjudication of existing
17 rights. (1) The state of Montana upon relation of the
18 attorney general shall petition the Montana supreme court to
19 require all persons claiming a right within a water division
20 to file a claim of the right as provided in [section 11].

21 (2) The requirement to file a claim for an existing
22 right is the first step in proceedings for the general
23 adjudication of all existing rights to the use of water.

24 (3) The water judge shall monitor the claim filing
25 procedure for claims within his water division and make any

1 orders necessary to assure timely and accurate compliance
2 with the claim filing procedure.

3 NEW SECTION. Section 21. Department assistance to
4 water judges. The department, subject to the direction of
5 the water judge, shall, without cost to the judicial
6 districts wholly or partly within his water division:

7 (1) provide such information and assistance as may be
8 required by the water judge to adjudicate claims of existing
9 rights;

10 (2) establish information and assistance programs to
11 aid claimants in the filing of claims for existing rights
12 required by [section 11];

13 (3) conduct field investigations of randomly selected
14 claims or claims that the water judge in consultation with
15 the department determines warrant investigation; and

16 (4) provide the water judge with all information in
17 its possession bearing upon existing rights, including all
18 declarations filed with and all information gathered by the
19 department with respect to existing rights in the Powder
20 River Basin.

21 NEW SECTION. Section 22. Preliminary decree. (1)
22 Within a reasonable time after the close of the filing
23 period, the water judge shall issue a preliminary decree.
24 The preliminary decree shall be based on the statements of
25 claim before the water judge, the data submitted by the

1 department, and any additional data obtained by the water
2 judge.

3 (2) The preliminary decree shall contain the
4 information and make the determinations, findings, and
5 conclusions required for the final decree under [section
6 24].

7 (3) If the water judge is satisfied that the report of
8 the water master meets the requirements for the preliminary
9 decree set forth in subsections (1) and (2), and is
10 satisfied with the conclusions contained in the report, the
11 water judge shall adopt the report as the preliminary
12 decree. If the water judge is not so satisfied, he may, at
13 his option, recommit the report to the master with
14 instructions, or modify the report and issue the preliminary
15 decree.

16 (4) The water judge shall send a copy of the
17 preliminary decree to the department, and the water judge
18 shall serve by mail a notice of availability of the
19 preliminary decree to each person who has filed a claim of
20 existing right, or, in the Powder River Basin, to each
21 person who has filed a declaration of existing right. The
22 water judge shall enclose with the notice an abstract of the
23 disposition of such person's claimed or declared existing
24 right. The notice of availability shall also be served upon
25 those issued or having applied for and not having been

1 denied a beneficial water use permit pursuant to 85-2-301,
2 those granted a reservation pursuant to 85-2-316, or other
3 interested persons who request service of the notice from
4 the water judge. The clerk or person designated by the
5 water judge to mail the notice shall make a general
6 certificate of mailing certifying that a copy of the notice
7 has been placed in the United States mail, postage prepaid,
8 addressed to each party required to be served notice of the
9 preliminary decree. Such certificate shall be conclusive
10 evidence of due and legal notice of entry of decree.

11 (5) Any person may obtain a copy of the preliminary
12 decree upon payment of a fee of \$20 or the cost of printing,
13 whichever is greater, to the water judge.

14 NEW SECTION. Section 23. Hearing on preliminary
15 decree. (1) Upon objection to the preliminary decree by the
16 department, a person named in the preliminary decree, or any
17 other person, for good cause shown, the department or such
18 person is entitled to a hearing thereon before the water
19 judge.

20 (2) If a hearing is requested, such request must be
21 filed with the water judge within 90 days after notice of
22 entry of the preliminary decree. The water judge may, for
23 good cause shown, extend this time limit an additional 30
24 days if application for the extension is made within 90 days
25 after notice of entry of the preliminary decree.

1 (3) The request for a hearing shall contain a precise
2 statement of the findings and conclusions in the preliminary
3 decree with which the department or person requesting the
4 hearing disagrees. The request shall specify the paragraphs
5 and pages containing the findings and conclusions to which
6 objection is made. The request shall state the specific
7 grounds and evidence on which the objections are based.

8 (4) Upon expiration of the time for filing objections
9 and upon timely receipt of a request for a hearing, the
10 water judge shall notify each party named in the preliminary
11 decree that a hearing has been requested. The water judge
12 shall fix a day when all parties who wish to participate in
13 future proceedings must appear or file a statement. The
14 water judge shall then set a date for a hearing. The water
15 judge may conduct individual or consolidated hearings. A
16 hearing shall be conducted as for other civil actions. At
17 the order of the water judge a hearing may be conducted by
18 the water master, who shall prepare a report of the hearing
19 as provided in M.R.Civ.P., Rule 53(e).

20 NEW SECTION. Section 24. Final decree. (1) The water
21 judge shall, on the basis of the preliminary decree and on
22 the basis of any hearing that may have been held, enter a
23 final decree affirming or modifying the preliminary decree.
24 If no request for a hearing is filed within the time
25 allowed, the preliminary decree automatically becomes final.

1 and the water judge shall enter it as the final decree.

2 (2) The final decree shall establish the existing
3 rights and priorities within the water judge's jurisdiction
4 of persons required by [section 11] to file a claim for an
5 existing right and of persons required to file a declaration
6 of existing rights in the Powder River Basin pursuant to an
7 order of the department or a district court issued under
8 sections 8 and 9 of Chapter 452, Laws of 1973.

9 (3) The final decree shall state the findings of fact,
10 along with any conclusions of law, upon which the existing
11 rights and priorities of each person named in the decree are
12 based.

13 (4) For each person who is found to have an existing
14 right, the final decree shall state:

15 (a) the name and post-office address of the owner of
16 the right;

17 (b) the amount of water, rate, and volume, included in
18 the right;

19 (c) the date of priority of the right;

20 (d) the purpose for which the water included in the
21 right is used;

22 (e) the place of use and a description of the land, if
23 any, to which the right is appurtenant;

24 (f) the source of the water included in the right;

25 (g) the place and means of diversion;

1 (h) the inclusive dates during which the water is used
2 each year;

3 (i) any other information necessary to fully define
4 the nature and extent of the right.

5 **NEW_SECTION.** Section 25. Appeals from final decree.
6 A person whose existing rights and priorities are determined
7 in the final decree may appeal the determination only if:

8 (1) he requested a hearing and appeared and entered
9 objections to the preliminary decree; or

10 (2) his rights as determined in the preliminary decree
11 were altered as the result of a hearing requested by another
12 person.

13 **NEW_SECTION.** Section 26. Certificate of water right.
14 When a final decree is entered, the water judge shall send a
15 copy to the department. The department shall on the basis of
16 the final decree issue a certificate of water right to each
17 person decreed an existing right. The original of the
18 certificate shall be sent to the county clerk and recorder
19 of the county where the point of diversion or place of use
20 is located for recordation. The department shall keep a copy
21 of the certificate in its office in Helena. After
22 recordation, the clerk and recorder shall send the
23 certificate to the person to whom the right is decreed.

24 **NEW_SECTION.** Section 27. Legislative intent regarding
25 federal and Indian water rights -- compacts -- negotiation

1 authorized — procedure. (1) It is the intent of the
 2 legislature that the attorney general include all federal
 3 and Indian interests in the petition required in [section
 4 16] under authority granted the state by 43 U.S.C. 666.
 5 However, it is further intended that the state of Montana
 6 proceed under the provisions of this section to conclude
 7 compacts for the equitable division and apportionment of
 8 waters between the state and its people and the several
 9 federal interests and Indian tribes claiming reserved water
 10 rights within the state. During the 3-year period from the
 11 time of filing the petition required in [section 16], and
 12 while negotiations for the conclusion of a compact under
 13 this section are being pursued, all actions to adjudicate
 14 reserved federal and Indian water rights under [this act]
 15 are suspended.

16 (2) The compact commission may negotiate with the
 17 federal government and Indian tribes jointly or severally to
 18 conclude compacts authorized under subsection (1). When the
 19 compact commission and authorized representatives of the
 20 federal government or Indian tribes have agreed to a
 21 compact, they shall sign a copy and file an original copy
 22 with the department of state of the United States of America
 23 and copies with the secretary of state of Montana and if the
 24 compact is with an Indian tribe, with the tribal council for
 25 the tribe involved. The compact is effective and binding

1 upon all parties upon ratification by the legislature of
 2 Montana, any affected tribal council, and the Congress of
 3 the United States. The water judge shall include in the
 4 preliminary decree the contents of a compact that has been
 5 agreed upon by the parties to the compact whether or not it
 6 has been ratified by Congress.

7 (3) (a) There is created a reserved water rights
 8 compact commission. Commissioners are appointed as follows:

9 (i) two members of the House of Representatives
 10 appointed by the speaker, each from a different political
 11 party;

12 (ii) two members of the Senate appointed by the
 13 president, each from a different political party;

14 (iii) one member designated by the governor;

15 (iv) one member designated by the attorney general; and

16 (v) one member from the department of natural
 17 resources and conservation designated by the director.

18 (b) Legislative members of the commission are entitled
 19 to receive compensation and expenses as provided in 5-2-301
 20 for each day actually spent on commission business. Other
 21 members are entitled to salary and expenses as state
 22 employees.

23 (c) The commission is attached to the governor's
 24 office for administrative purposes only. The costs of the
 25 commission shall be paid from funds appropriated for that

1 purpose from the water right adjudication account
2 established in [section 19].

3 (d) Members appointed to the commission shall serve
4 until the work of the commission is completed or until they
5 resign or otherwise unable to serve. A vacancy must be
6 filled in the manner or the original appointment.

7 Section 28. Section 3-5-111, MCA, is amended to read:

8 "3-5-111. District courts presided over by judges of
9 other districts. A judge of the district court of any
10 judicial district may hold the district court in any county
11 of another district than his own at the request of the judge
12 thereof or as otherwise provided by law. Upon the request
13 of the governor, it is his duty to do so. In either case
14 the judge holding the court has the same power either in
15 court or chambers as a judge thereof."

16 Section 29. Section 85-2-102, MCA, is amended to read:

17 "85-2-102. Definitions. Unless the context requires
18 otherwise, in this chapter the following definitions apply:

19 (1) "Appropriate" means to divert, impound, or
20 withdraw (including by stock for stock water) a quantity of
21 water or, in the case of a public agency, to reserve water
22 in accordance with 85-2-316.

23 (2) "Beneficial use" means a use of water for the
24 benefit of the appropriator, other persons, or the public,
25 including but not limited to agricultural (including stock

1 water), domestic, fish and wildlife, industrial, irrigation,
2 mining, municipal, power, and recreational uses. A use of
3 water for slurry to export coal from Montana is not a
4 beneficial use. Slurry is a mixture of water and insoluble
5 matter.

6 (3) "Board" means the board of natural resources and
7 conservation provided for in 2-15-3302.

8 (4) "Certificate" means the a certificate of water
9 right issued by the department under 85-2-218, subsections
10 (1) and (2) of 85-2-306, and 85-2-915.

11 (5) "Declaration" means the declaration of an existing
12 right filed with the department under 85-2-203 section 8.
13 Chapter 452, Laws of 1973.

14 (6) "Department" means the department of natural
15 resources and conservation provided for in Title 2, chapter
16 15, part 33.

17 (7) "Existing right" means a right to the use of water
18 which would be protected under the law as it existed prior
19 to July 1, 1973.

20 (8) "Groundwater" means any water beneath the land
21 surface or beneath the bed of a stream, lake, reservoir, or
22 other body of surface water, and which is not a part of that
23 surface water.

24 (9) "Permit" means the permit to appropriate issued by
25 the department under 85-2-301 through 85-2-303 and 85-2-306

through 85-2-314.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(12) "Senior judge in each judicial district" means the judge in the district who has served with or without interruptions for the longest period of time.~~

~~(12)(13)~~ "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(13)(14)~~ "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water and diffuse surface water.

~~(15) "Water division" means a drainage basin as defined in [section 2].~~

~~(16) "Water judge" means a judge as provided for in [sections 1 through 10].~~

~~(17) "Water master" means a master as provided for in [sections 1 through 10].~~

~~(14)(18)~~ "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 30. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, ~~claims of existing rights~~, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, ~~claim of existing rights~~, or other document to be filed with the department under this chapter ~~not inconsistent with the requirements of this chapter~~;

(3) ~~establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights~~, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department ~~or claims of existing rights with a district court~~ under this chapter."

Section 31. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for ~~any action taken by the department at the request of the water judge or for the~~ issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 32. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court ~~supervising the distribution of water among appropriators from the source~~ to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to

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1 cease and desist from doing so and to take such steps as may
2 be necessary to remedy the waste, unlawful use, or
3 interference.

4 (2) The department may attach to the controlling works
5 a written notice, properly dated and signed, setting forth
6 the fact that the controlling works have been properly
7 regulated by it, which notice shall be legal notice to all
8 persons interested in the appropriation or distribution of
9 the water.

10 (3) The department may also direct its own attorney or
11 request the attorney general or county attorney to bring
12 suit to enjoin such waste, unlawful use, or interference."

13 Section 33. Section 85-2-401, MCA, is amended to read:

14 "85-2-401. Priority. (1) As between appropriators, the
15 first in time is the first in right. Priority of
16 appropriation does not include the right to prevent changes
17 by later appropriators in the condition of water occurrence,
18 such as the increase or decrease of streamflow or the
19 lowering of a water table, artesian pressure, or water
20 level, if the prior appropriator can reasonably exercise his
21 water right under the changed conditions.

22 (2) Priority of appropriation made under this chapter
23 dates from the filing of an application for a permit with
24 the department, except as otherwise provided in 85-2-301
25 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

1 (3) Priority of appropriation perfected before July 1,
2 1973, shall be determined as provided in 85-2-201 through
3 85-2-210 part 2 of this chapter."

4 Section 34. Section 85-2-406, MCA, is amended to read:

5 "85-2-406. District court supervision of water
6 distribution. (1) The district courts shall supervise the
7 distribution of water among all appropriators. This
8 supervisory authority includes the supervision of all water
9 commissioners appointed prior or subsequent to July 1, 1973.
10 The supervision shall be governed by the principle that
11 first in time is first in right.

12 (2) When a water distribution controversy arises upon
13 a source of water in which existing rights have not been
14 determined according to 85-2-201 through 85-2-210 part 2 of
15 this chapter, any party to the controversy may petition the
16 district court for relief. ~~The department shall be served~~
17 ~~with process in any proceeding under this subsection and~~
18 ~~shall within a reasonable time thereafter notify the court~~
19 ~~whether it intends in its discretion within a reasonable~~
20 ~~time to begin proceedings to determine existing rights in~~
21 ~~the source in accordance with part 2 of this chapter. The~~
22 ~~department may if it declines to commence proceedings to~~
23 ~~determine existing rights in the source intervene as a~~
24 ~~party in the proceeding.~~ The district court from which
25 relief is sought may grant such injunctive or other relief

1 which is necessary and appropriate to preserve property
 2 rights or the status quo pending the department's decision
 3 ~~whether to determine existing rights in the source or the~~
 4 ~~department's decision to intervene as a party, as the case~~
 5 ~~may be, if the department does not proceed to obtain a~~
 6 ~~determination of existing rights, the district court shall~~
 7 ~~settle only the controversy between the parties~~ issuance of
 8 the final decree.

9 (3) A controversy between appropriators from a source
 10 which has been the subject of a general determination of
 11 existing rights under ~~85-2-201 through 85-2-210~~ part 2 of
 12 this chapter shall be settled by the district court which
 13 issued the final decree. The order of the district court
 14 settling the controversy may not alter the existing rights
 15 and priorities established in the final decree. In cases
 16 involving permits issued by the department, the court may
 17 not amend the respective rights established in the permits
 18 or alter any terms of the permits unless the permits are
 19 inconsistent or interfere with rights and priorities
 20 established in the final decree. The order settling the
 21 controversy shall be appended to the final decree, and a
 22 copy shall be filed with the department. The department
 23 shall be served with process in any proceeding under this
 24 subsection, and the department may, in its discretion,
 25 intervene in the proceeding."

1 Section 35. Codification. (1) Sections 1 through 10 of
 2 this act are intended to be codified as an integral part of
 3 Title 3, and the provisions contained in Title 3 apply to
 4 this act.

5 (2) Sections 11 through 27 are intended to be codified
 6 as an integral part of Title 85, chapter 2, part 2, and the
 7 provisions contained in Title 85, chapter 2, apply to this
 8 act.

9 (3) If the provisions of this act are not codified as
 10 stated above, the code commissioner shall add to the MCA, if
 11 necessary, statutory language to convey the intent of this
 12 section.

13 Section 36. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

19 Section 37. Repealer. Sections 85-2-201 through
 20 85-2-210, MCA, are repealed.

21 Section 38. Effective date. This act is effective on
 22 passage and approval.

-End-

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SENATE BILL NO. 76

INTRODUCED BY BOYLAN, TURNAGE, GALT,

GRAHAM, KOLSTAD, CONOVER, MANLEY, SEVERSON,

THIESSEN, DOVER, NELSON, E. SMITH, S. BROWN

BY REQUEST OF THE SUBCOMMITTEE ON WATER RIGHTS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADJUDICATE CLAIMS OF
EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS ~~3-1-101~~
~~3-1-102~~, ~~3-1-103~~, ~~3-1-104~~, ~~3-1-105~~, ~~3-1-106~~, ~~3-1-107~~, ~~3-1-108~~, ~~3-1-109~~, ~~3-1-110~~, ~~3-1-111~~,
85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, 85-2-405,
AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH
85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Third Reading Bill

(Strike everything after the enacting clause and insert:)

NEW SECTION. Section 1. ~~District PURPOSE -- DISTRICT~~
court water divisions -- water judges -- creation. (1) ~~[THIS~~
~~ACT] AMENDS THE MONTANA WATER USE ACT TO EXPEDITE AND~~
~~FACILITATE THE ADJUDICATION OF EXISTING WATER RIGHTS.~~

~~(1)(2)~~ To adjudicate existing water rights water
divisions are established as defined in [section 2]. A water
division shall be presided over by a water judge.

~~(2)(3)~~ A water judge shall be designated effective
July--1--1979. ~~WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF~~

~~[THIS ACT]~~ for each water division by a majority vote of a
committee composed of the--senior--judge-in-each-judicial
~~district THE DISTRICT JUDGE FROM EACH SINGLE JUDGE JUDICIAL~~
~~DISTRICT AND THE CHIEF DISTRICT JUDGE FROM EACH MULTIPLE~~
~~JUDGE JUDICIAL DISTRICT.~~ Wholly or partly within the
division. A water judge must be a district judge of a
judicial district wholly or partly within the water
division. A district judge may not sit as a water judge in
more than one division.

~~(3)(4)~~ No water judge may preside over matters
concerning the determination and interpretation of existing
water rights beyond the boundaries specified in [section 2]
for his division.

~~(4)(5)~~ A water judge, when presiding over a water
division, presides as district judge in and for each
judicial district wholly or partly within the water
division.

~~(5)(6)~~ The jurisdiction of each judicial district
concerning the determination and interpretation of existing
water rights is exercised exclusively by it through the
water division or water divisions that contain the judicial
district wholly or partly.

NEW SECTION. Section 2. Water divisions defined. (1)
There are four water divisions whose boundaries are formed
by the natural divides between drainages and the borders of

REFERENCE BILL: Includes Free Joint -2-
Conference Committee Report
Dated 4/18/79

SB 76

1 the state of Montana and which are described as follows:

2 (a) The Yellowstone River Basin water division
3 consists of those areas drained by the Yellowstone and
4 Little Missouri Rivers and any remaining areas in Carter
5 County.

6 (b) The lower Missouri River Basin water division
7 consists of those areas drained by the Missouri River from
8 below the mouth of the Marias River and any remaining areas
9 in Glacier and Sheridan Counties.

10 (c) The upper Missouri River Basin water division
11 consists of those areas drained by the Missouri River to
12 below the mouth of the Marias River.

13 (d) The Clark Fork River Basin water division consists
14 of the areas drained by the Clark Fork River, the Kootenai
15 River, and any remaining areas in Lincoln County.

16 (2) Whenever a question arises concerning which water
17 judge shall preside over adjudication of an-existing-right A
18 ~~MATTER CONCERNING THE DETERMINATION AND INTERPRETATION OF~~
19 ~~EXISTING WATER RIGHTS~~, the question shall be settled by the
20 water judges involved.

21 NEW SECTION. Section 3. Appointment of water masters
22 -- qualifications -- removal. (1) The water judge in each
23 water division shall appoint a water master.

24 (2) A water master may be appointed after July 1,
25 1980, and must be appointed on or before July 1, 1982.

1 (3) In appointing a water master, the water judge
2 shall consider a potential master's experience with water
3 law, water use, and water rights.

4 (4) A water master shall serve at the pleasure of the
5 water judge and may be removed by the water judge.

6 NEW SECTION. Section 4. Salary, expenses, and
7 retirement of water masters. (1) The water judges shall set
8 a uniform salary for water masters. Water masters shall
9 receive expenses as provided in 2-18-501 through 2-18-503.

10 (2) A water master shall participate in the Montana
11 Public Employees' Retirement System established in Title 19,
12 chapter 3.

13 (3) The salary and expenses of a water master shall be
14 paid from the water right adjudication account established
15 in [section 18].

16 NEW SECTION. Section 5. Duties of water masters. (1)
17 The water master has the general powers given to a master by
18 M.R.Civ.P., Rule 53(c).

19 (2) Within a reasonable time after June 30, 1983, the
20 water master shall issue a report to the water judge meeting
21 the requirements for the preliminary decree as specified in
22 [section 22].

23 (3) After a water judge issues a preliminary decree,
24 the water master shall assist the water judge in the
25 performance of the water division's further duties as

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1 ordered by the water judge.

2 NEW SECTION. Section 6. Jurisdiction of the water
3 division. ~~{1} When the department of natural resources and~~
4 ~~conservation files a copy of each statement of claim with~~
5 ~~the clerk of the district court as required by [section 11]~~
6 ~~the claim shall be considered filed in the judicial district~~
7 ~~of the county in which the diversion is made or, if there is~~
8 ~~a claimed right with no diversion, in the judicial district~~
9 ~~of the county in which the use occurs.~~ (1) THE ACTION FOR
10 THE ADJUDICATION OF ALL EXISTING WATER RIGHTS UNDER [THIS
11 ACT] IS COMMENCED WITH THE ISSUING OF THE ORDER BY THE
12 MONTANA SUPREME COURT TO FILE A STATEMENT OF A CLAIM OF AN
13 EXISTING WATER RIGHT AS PROVIDED IN [SECTION 16], AS TO EACH
14 CLAIM, THE ACTION IS CONSIDERED FILED IN THE JUDICIAL
15 DISTRICT OF THE COUNTY IN WHICH THE DIVERSION IS MADE OR, IF
16 THERE IS A CLAIMED RIGHT WITH NO DIVERSION, IN THE JUDICIAL
17 DISTRICT OF THE COUNTY IN WHICH THE USE OCCURS.

18 (2) The water judge for each division shall exercise
19 jurisdiction over all matters concerning the determination
20 and interpretation of existing water rights within his
21 division as specified in [section 2] that are CONSIDERED
22 filed in OR TRANSFERRED TO a judicial district wholly or
23 partly within the division.

24 (3) The water judge may consolidate all matters
25 concerning the determination and interpretation of existing

1 water rights within the water judge's division in any
2 combination or groups of claims or matters for joint
3 hearings or proceedings conducted by the water judge or
4 water master in any location within the division. The water
5 judge may make such consolidations as are necessary to
6 administer the requirements of [this act] in adjudicating
7 claims of existing water rights.

8 (4) All matters concerning the determination and
9 interpretation of existing water rights shall be brought
10 before or immediately transferred to the water judge in the
11 proper water division unless witnesses have been sworn and
12 testimony has been taken by a district court prior to
13 ~~October 1, 1979~~ THE DATE OF THE MONTANA SUPREME COURT ORDER
14 AS PROVIDED IN [SECTION 16].

15 (5) The water judge of each water division may appoint
16 and supervise a water commissioner as provided for in Title
17 85, chapter 5.

18 (6) The water judge of each water division may enforce
19 the provisions of a final decree issued in that water
20 division as provided in [section 24].

21 (7) THE WATER JUDGE MAY DESIGNATE ANY OTHER DISTRICT
22 JUDGE WITHIN THE WATER DIVISION TO PRESIDE IN HIS ABSENCE ON
23 HIS BEHALF AS WATER JUDGE FOR THE IMMEDIATE ENFORCEMENT OF
24 AN EXISTING DECREE OR THE IMMEDIATE GRANTING OF
25 EXTRAORDINARY RELIEF AS MAY BE PROVIDED FOR BY LAW UPON AN

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1 ALLEGATION OF IRREPARABLE HARM.

2 NEW SECTION. Section 7. Disqualification of water
3 judges or water master. (1) A water judge may disqualify
4 himself or the water master in any proceeding or pertinent
5 portion thereof in which his or the water master's
6 impartiality might reasonably be questioned.

7 (2) A water judge may also disqualify himself or the
8 water master in the following circumstances:

9 (a) If he or the water master has a personal bias or
10 prejudice concerning a party of personal knowledge or
11 disputed evidentiary facts concerning the proceeding;

12 (b) If in private practice he or the water master
13 served as a lawyer in the matter in controversy or a lawyer
14 with whom he or the water master previously practiced law
15 served during such association as a lawyer concerning the
16 matter or the judge or the lawyer has been a material
17 witness concerning it;

18 (c) If he or the water master has served in
19 governmental employment and in such capacity participated as
20 counsel, adviser, or material witness concerning the
21 proceeding or expressed an opinion concerning the merits of
22 the particular case in controversy;

23 (d) If he or the water master knows that he or the
24 water master individually or as a fiduciary, or his or the
25 water master's spouse or minor child residing in his or the

1 water master's household has a financial interest in the
2 subject matter in controversy or in a party to the
3 proceeding or any other interest that could be substantially
4 affected by the outcome of the proceeding; or

5 (e) If he or the water master or his or the water
6 master's spouse or a person within the third degree of
7 relationship to any of them (as calculated according to
8 72-11-101 through 72-11-105) or the spouse of such a person:

9 (i) Is a party to the proceeding or an officer,
10 director, or trustee of a party;

11 (ii) Is known by the judge or water master to have an
12 interest that could be substantially affected by the outcome
13 of the proceeding;

14 (iii) Is to the judge's or water master's knowledge
15 likely to be a material witness in the proceeding.

16 (3) A water judge should inform himself about his and
17 the water master's personal and fiduciary financial
18 interests and make a reasonable effort to inform himself
19 about the personal financial interests of his and the water
20 master's spouse and minor children residing in his or the
21 water master's respective household.

22 (4) For the purposes of this section, the following
23 definitions apply:

24 (a) "Proceeding" includes prehearing, hearing,
25 appellate review, or other stages of adjudication conducted

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1 by the water master or water judge.

2 (b) "Fiduciary" includes such relationships as
3 executor, administrator, trustee, or guardian.

4 (c) "Financial interest" means ownership of a legal or
5 equitable interest, however small, or a relationship as
6 director, advisor, or other active participant in the
7 affairs of a party, except that:

8 (i) ownership in a mutual or common investment fund
9 that holds securities is not a financial interest in such
10 securities unless the judge or water master participates in
11 the management of the fund;

12 (ii) an office in an educational, religious,
13 charitable, fraternal, or civic organization is not a
14 financial interest in securities held by the organization;

15 (iii) the proprietary interest of a policyholder in a
16 mutual insurance company or a depositor in a mutual savings
17 association or a similar proprietary interest is a financial
18 interest in the organization only if the outcome of the
19 proceeding could substantially affect the value of the
20 interest; and

21 (iv) ownership of government securities is a financial
22 interest in the issuer only if the outcome of the proceeding
23 could substantially affect the value of the securities.

24 (5) A water judge may accept from the parties to the
25 proceeding a waiver of any ground for disqualification if it

1 is preceded by a full disclosure on the record of the basis
2 for disqualification.

3 (6) The procedure for disqualification of a water
4 judge or water master specified in this section is exclusive
5 unless otherwise specifically altered by the Montana supreme
6 court.

7 NEW SECTION. Section 8. Designation of water judge to
8 fill vacancy. If a vacancy occurs, it shall be filled in the
9 manner provided in [section 1] for the initial designation
10 of a water judge. A vacancy is created when a water judge
11 dies, retires, is not elected to a subsequent term, ~~FORFEITS~~
12 ~~HIS JUDICIAL POSITION, IS REMOVED,~~ or is otherwise unable to
13 complete his term as a district judge.

14 NEW SECTION. Section 9. Water judges -- term of
15 office. The term of office for water judges is from duty--~~to~~
16 ~~1979, THE DATE OF INITIAL APPOINTMENT AS PROVIDED IN~~
17 ~~[SECTION 1]~~ to June 30, 1985. After June 30, 1985, the term
18 of office of a water judge is 4 years, subject to
19 continuation of the water divisions by the legislature.

20 NEW SECTION. Section 10. Promulgation of rules and
21 prescription of forms. ~~THE AS SOON AS PRACTICABLE THE~~
22 Montana supreme court may promulgate special rules of
23 practice and procedure and shall prescribe forms for use in
24 connection with [this act] in consultation with the water
25 judge and the department.

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NEW SECTION. Section 11. Claim of existing water right -- filing statement of claim required -- exemptions. (1) A person claiming an existing right, unless exempted below OR UNLESS AN EARLIER FILING DATE IS ORDERED AS PROVIDED IN [SECTION 16], shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources and claims for rights in the Powder River Basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, OR UNDER SECTIONS 3 AND 4 OF CHAPTER 485, LAWS OF 1975, are exempt from the filing requirements of subsection (1) of this section. Such claims may, however, be voluntarily filed.

NEW SECTION. Section 12. Department of fish and game

to represent public recreational uses. The department of fish and game shall exclusively represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26], provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26] and further provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

NEW SECTION. Section 13. Statement of claim -- contents. (1) The statement of claim for each right shall include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water and times of use claimed;
- (d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;
- (e) the purpose of use, including, if for irrigation,

1 the number of acres irrigated;

2 (f) the approximate dates of first putting water to
3 beneficial use for the various amounts and times claimed in
4 subsection (c); and

5 (g) the sworn statement that the claim set forth is
6 true and correct to the best of claimant's knowledge and
7 belief.

8 (2) The claimant shall submit maps, plats, aerial
9 photographs, decrees, or pertinent portions thereof, or
10 other evidence in support of his claim. All maps, plats, or
11 aerial photographs should show as nearly as possible to
12 scale the point of diversion, place of use, place of
13 storage, and other pertinent conveyance facilities.

14 NEW SECTION. Section 14. Abandonment by failure to
15 file claim. The failure to file a claim of an existing right
16 as required by [section 11] establishes a conclusive
17 presumption of abandonment of that right.

18 NEW SECTION. Section 15. Claim to constitute prima
19 facie evidence. A claim of an existing right filed in
20 accordance with [section 11] constitutes prima facie proof
21 of its content until the issuance of a final decree.

22 NEW SECTION. Section 16. Order to file claim. (1) The
23 Montana supreme court shall ~~on or before October 1, 1979,~~
24 ~~within 10 days of the filing of the petition by the attorney~~
25 GENERAL issue an order to file a statement of a claim of an

1 existing water right in substantially the following form:

2 "WATER RIGHTS ORDER

3 FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT
4 IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED
5 WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence
6 shall be printed in not less than 12-point boldface type.)
7 This order is notice of commencement of procedures for the
8 general adjudication of existing rights to the use of water
9 and of the requirement to file a claim for certain existing
10 rights to the use of water. Every person, including but not
11 limited to an individual, partnership, association, public
12 or private corporation, city or other municipality, county,
13 state agency or the state of Montana, and federal agency of
14 the United States of America ON ITS OWN BEHALF OR AS TRUSTEE
15 FOR ANY INDIAN OR INDIAN TRIBE, asserting a claim to an
16 existing right to the use of water arising prior to July 1,
17 1973, is ordered to file a statement of claim to that right
18 with the department no later than June 30, 1983. Claims for
19 stock and INDIVIDUAL AS OPPOSED TO MUNICIPAL domestic uses
20 based upon instream flow or groundwater sources are exempt
21 from this requirement; however, claims for such uses may be
22 voluntarily filed. Claims filed with the department in the
23 Powder River Basin in a declaration filed pursuant to the
24 order of the department of natural resources and
25 conservation or a district court issued pursuant to sections

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8 and 9 of Chapter 452, Laws of 1973, OR UNDER SECTIONS 3
AND 4 OF CHAPTER 485, LAWS OF 1975, are also exempt.

For further information, contact the department of
 natural resources and conservation, Helena, Montana, for a
 copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana
 supreme court may ~~SHALL~~ issue the order called for in
 subsection (1) with a shorter claim filing period of not
 less than 1 year, SUBJECT TO EXTENSION NOT BEYOND JUNE 30,
1983, BY THE MONTANA SUPREME COURT UPON PETITION OF THE
ATTORNEY GENERAL, in those basins or subbasins where state
 adjudication jurisdiction is being or is likely to be
 challenged.

~~NEW SECTION.~~ Section 17. How notice of the order to
 be given. To assure that all persons who may claim an
 existing water right are notified of the requirement to file
 a claim of that right, the Montana supreme court shall give
 notice of the order as follows:

(1) It shall cause the order printed in not less than
 10-point type to be placed in a prominent and conspicuous
 place in all daily newspapers of the state and in at least
 one newspaper published in each county of the state during
 the month of October-1979, WITHIN 30 DAYS AFTER THE MONTANA
SUPREME COURT ORDER AS PROVIDED IN [SECTION 16] and in April
 of 1980, 1981, 1982, and 1983.

(2) It shall cause the order in writing to be placed
 in a prominent and conspicuous location in each county
 courthouse in the state WITHIN 30 DAYS AFTER THE MONTANA
SUPREME COURT ORDER AS PROVIDED IN [SECTION 16].

(3) It shall provide a sufficient number of copies of
 the order to the county treasurers before October 15, 1979,
 1980, 1981, and 1982, and the county treasurers shall
 enclose a copy of the order with each statement of property
 taxes mailed in 1979, 1980, 1981, and 1982. In the
 implementation of this subsection, the department shall
 provide reimbursement to each county treasurer for the
 reasonable additional costs incurred by the treasurer
 arising from the inclusion of the order required by this
 section. The department shall be reimbursed for such costs
 from the water right adjudication account created by
 [section 18].

(4) It shall provide copies of the order in writing to
 the press services with offices located in Helena during
 duty-1979 WITHIN 30 DAYS AFTER THE MONTANA SUPREME COURT
ORDER AS PROVIDED IN [SECTION 16], and in April of 1980,
 1981, 1982, and 1983.

(5) IT SHALL, UNDER AUTHORITY GRANTED TO THE STATES BY
43 U.S.C. 666, PROVIDE FOR SERVICE OF THE PETITION AND ORDER
UPON THE UNITED STATES ATTORNEY GENERAL OR HIS DESIGNATED
REPRESENTATIVE.

1 ~~†5†16†~~ It may also in its discretion give notice of
2 the order in any other manner that will carry out the
3 purposes of this section.

4 ~~†6†17†~~ It may also in its discretion order that the
5 department or the water judge assist the Montana supreme
6 court in the carrying out of this section.

7 ~~NEW SECTION.~~ Section 18. Fees ~~--~~ special account
8 created. (1) Each claim filed under [section 11] shall be
9 accompanied by a filing fee in the amount of \$40, subject to
10 the following exceptions:

11 (a) the total filing fees for all claims filed by one
12 person in any one water court district ~~DIVISION~~ may not
13 exceed \$480; and

14 (b) no filing fee is required accompanying a claim of
15 an existing right that is included in a decree of a court in
16 the state of Montana and which is accompanied by a certified
17 copy of that decree or pertinent portion thereof or verified
18 as otherwise ordered by the court.

19 (2) There is established a water right adjudication
20 account in the earmarked revenue fund of the state treasury.
21 All fees collected under this section and [section 22] shall
22 be deposited in the account to pay the expenses incurred by
23 the state for administering [this act].

24 ~~NEW SECTION.~~ Section 19. Expenses to be borne by
25 state. All expenses incurred by the state as a result of

1 [this act] are to be paid from the water right adjudication
2 account in the earmarked revenue fund established in
3 [section 18]. Expenses include but are not limited to the
4 salaries and expenses of personnel, equipment, office space,
5 and other necessities incurred in administering [this act].
6 If sufficient revenue is not available from the earmarked
7 revenue fund, the expense shall be paid from the state's
8 general fund.

9 ~~NEW SECTION.~~ Section 20. Adjudication of existing
10 rights. (1) ~~THE WITHIN 20 DAYS AFTER [THE EFFECTIVE DATE OF~~
11 ~~THIS ACT], THE~~ state of Montana upon relation of the
12 attorney general shall petition the Montana supreme court to
13 require all persons claiming a right within a water division
14 to file a claim of the right as provided in [section 11].

15 ~~†2†~~ ~~THE REQUIREMENT TO FILE A CLAIM FOR AN EXISTING~~
16 ~~RIGHT IS THE FIRST STEP IN PROCEEDINGS FOR THE GENERAL~~
17 ~~ADJUDICATION OF ALL EXISTING RIGHTS TO THE USE OF WATER.~~

18 ~~†3†12†~~ The water judge shall monitor the claim filing
19 procedure for claims within his water division and make any
20 orders necessary to assure timely and accurate compliance
21 with the claim filing procedure.

22 ~~NEW SECTION.~~ Section 21. Department assistance to
23 water judges. The department, subject to the direction of
24 the water judge, shall, without cost to the judicial
25 districts wholly or partly within his water division:

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1 (1) provide such information and assistance as may be
2 required by the water judge to adjudicate claims of existing
3 rights;

4 (2) establish information and assistance programs to
5 aid claimants in the filing of claims for existing rights
6 required by [section 11];

7 (3) conduct field investigations of randomly--selected
8 claims--or claims that the water judge in consultation with
9 the department determines warrant investigation; and

10 (4) provide the water judge with all information in
11 its possession bearing upon existing rights, including all
12 declarations filed with and all information gathered by the
13 department with respect to existing rights in the Powder
14 River Basin.

15 NEW SECTION. Section 22. Preliminary decree. (1)
16 Within a reasonable time after the close of the filing
17 period, the water judge shall issue a preliminary decree.
18 The preliminary decree shall be based on the statements of
19 claim before the water judge, the data submitted by the
20 department, and any additional data obtained by the water
21 judge.

22 (2) The preliminary decree shall contain the
23 information and make the determinations, findings, and
24 conclusions required for the final decree under [section
25 24].

1 (3) If the water judge is satisfied that the report of
2 the water master meets the requirements for the preliminary
3 decree set forth in subsections (1) and (2), and is
4 satisfied with the conclusions contained in the report, the
5 water judge shall adopt the report as the preliminary
6 decree. If the water judge is not so satisfied, he may, at
7 his option, recommit the report to the master with
8 instructions, or modify the report and issue the preliminary
9 decree.

10 (4) The water judge shall send a copy of the
11 preliminary decree to the department, and the water judge
12 shall serve by mail a notice of availability of the
13 preliminary decree to each person who has filed a claim of
14 existing right, or, in the Powder River Basin, to each
15 person who has filed a declaration of AN existing right. The
16 water judge shall enclose with the notice an abstract of the
17 disposition of such person's claimed or declared existing
18 right. The notice of availability shall also be served upon
19 those issued or having applied for and not having been
20 denied a beneficial water use permit pursuant to 85-2-301
21 TITLE 05, CHAPTER 2, PART 3, those granted a reservation
22 pursuant to 85-2-316, or other interested persons who
23 request service of the notice from the water judge. The
24 clerk or person designated by the water judge to mail the
25 notice shall make a general certificate of mailing

1 certifying that a copy of the notice has been placed in the
2 United States mail, postage prepaid, addressed to each party
3 required to be served notice of the preliminary decree. Such
4 certificate shall be conclusive evidence of due and legal
5 notice of entry of decree.

6 (5) Any person may obtain a copy of the preliminary
7 decree upon payment of a fee of \$20 or the cost of printing,
8 whichever is greater, to the water judge.

9 NEW SECTION. Section 23. Hearing on preliminary
10 decree. (1) Upon objection to the preliminary decree by the
11 department, a person named in the preliminary decree, or any
12 other person, for good cause shown, the department or such
13 person is entitled to a hearing thereon before the water
14 judge.

15 (2) If a hearing is requested, such request must be
16 filed with the water judge within 90 days after notice of
17 entry of the preliminary decree. The water judge may, for
18 good cause shown, extend this time limit an additional 30
19 days if application for the extension is made within 90 days
20 after notice of entry of the preliminary decree.

21 (3) The request for a hearing shall contain a precise
22 statement of the findings and conclusions in the preliminary
23 decree with which the department or person requesting the
24 hearing disagrees. The request shall specify the paragraphs
25 and pages containing the findings and conclusions to which

1 objection is made. The request shall state the specific
2 grounds and evidence on which the objections are based.

3 (4) Upon expiration of the time for filing objections
4 and upon timely receipt of a request for a hearing, the
5 water judge shall notify each party named in the preliminary
6 decree that a hearing has been requested. The water judge
7 shall fix a day when all parties who wish to participate in
8 future proceedings must appear or file a statement. The
9 water judge shall then set a date for a hearing. The water
10 judge may conduct individual or consolidated hearings. A
11 hearing shall be conducted as for other civil actions. At
12 the order of the water judge a hearing may be conducted by
13 the water master, who shall prepare a report of the hearing
14 as provided in M.R.Civ.P., Rule 53(e).

15 NEW SECTION. Section 24. Final decree. (1) The water
16 judge shall, on the basis of the preliminary decree and on
17 the basis of any hearing that may have been held, enter a
18 final decree affirming or modifying the preliminary decree.
19 If no request for a hearing is filed within the time
20 allowed, the preliminary decree automatically becomes final,
21 and the water judge shall enter it as the final decree.

22 (2) The final decree shall establish the existing
23 rights and priorities within the water judge's jurisdiction
24 of persons required by [section 11] to file a claim for an
25 existing right and of persons required to file a declaration

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of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, rate, and volume, included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

NEW SECTION. Section 25. Appeals from final decree.

A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the preliminary decree; or

(2) his rights as determined in the preliminary decree were altered as the result of a hearing requested by another person.

NEW SECTION. Section 26. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the county clerk and recorder of the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

~~NEW SECTION. Section 27. Legislative intent regarding federal and Indian water rights compacts negotiation authorized procedure. It is the intent of the legislature that the attorney general include all federal and Indian interests in the petition required in section 16j under authority granted the state by 43-8-56-666. However, it is further intended that the state of Montana~~

1 proceed--under--the--provisions--of--this--section--to--conclude
2 compacts--for--the--equitable--division--and--apportionment--of
3 waters--between--the--state--and--its--people--and--the--several
4 federal--interests--and--Indian--tribes--claiming--reserved--water
5 rights--within--the--state--During--the--3--year--period--from--the
6 time--of--filing--the--petition--required--in--[section--16]--and
7 while--negotiations--for--the--conclusion--of--a--compact--under
8 this--section--are--being--pursued--all--actions--to--adjudicate
9 reserved--federal--and--Indian--water--rights--under--[this--act]
10 are--suspended.

11 (2)--The--compact--commission--may--negotiate--with--the
12 federal--government--and--Indian--tribes--jointly--or--severally--to
13 conclude--compacts--authorized--under--subsection--(1)--When--the
14 compact--commission--and--authorized--representatives--of--the
15 federal--government--or--Indian--tribes--have--agreed--to--a
16 compact--they--shall--sign--a--copy--and--file--an--original--copy
17 with--the--department--of--state--of--the--United--States--of--America
18 and--copies--with--the--secretary--of--state--of--Montana--and--if--the
19 compact--is--with--an--Indian--tribe--with--the--tribal--council--for
20 the--tribe--involved--The--compact--is--effective--and--binding
21 upon--all--parties--upon--ratification--by--the--legislature--of
22 Montana--any--affected--tribal--council--and--the--congress--of
23 the--United--States--The--water--judge--shall--include--in--the
24 preliminary--decree--the--contents--of--a--compact--that--has--been
25 agreed--upon--by--the--parties--to--the--compact--whether--or--not--it

1 has--been--ratified--by--congress
2 (3)--(a)--There--is--created--a--reserved--water--rights
3 compact--commission--Commissioners--are--appointed--as--follows:
4 (i)--two--members--of--the--house--of--representatives
5 appointed--by--the--speaker--each--from--a--different--political
6 party
7 (ii)--two--members--of--the--senate--appointed--by--the
8 president--each--from--a--different--political--party
9 (iii)--one--member--designated--by--the--governor
10 (iv)--one--member--designated--by--the--attorney--general--and
11 (v)--one--member--from--the--department--of--natural
12 resources--and--conservation--designated--by--the--director
13 (b)--Legislative--members--of--the--commission--are--entitled
14 to--receive--compensation--and--expenses--as--provided--in--5-2-38
15 for--each--day--actually--spent--on--commission--business--Other
16 members--are--entitled--to--salary--and--expenses--as--state
17 employees
18 (c)--The--commission--is--attached--to--the--governor's
19 office--for--administrative--purposes--only--The--costs--of--the
20 commission--shall--be--paid--from--funds--appropriated--for--that
21 purpose--from--the--water--right--adjudication--account
22 established--in--[section--19]
23 (d)--Members--appointed--to--the--commission--shall--serve
24 until--the--work--of--the--commission--is--completed--or--until--they
25 resign--or--are--otherwise--unable--to--serve--A--vacancy--must--be

1 ~~fitted-in-the-manner-of-the-originat-appointments~~

2 THERE IS A NEW MCA SECTION THAT READS:

3 Section 27. Legislative Intent regarding Indian water
4 rights -- suspension of adjudication -- negotiation of
5 compacts authorized -- procedure -- negotiation of federal
6 rights. (1) Because the water and water rights within each
7 water division are interrelated, it is the intent of the
8 legislature to conduct unified proceedings for the general
9 adjudication of existing water rights under the Montana
10 Water Use Act. Therefore, it is the intent of the
11 legislature that the attorney general's petition required in
12 [section 16] include all claimants of reserved Indian water
13 rights as necessary and indispensable parties under
14 authority granted the state by 43 U.S.C. 666. However, it is
15 further intended that the state of Montana proceed under the
16 provisions of this section in an effort to conclude compacts
17 for the equitable division and apportionment of waters
18 between the state and its people and the several Indian
19 tribes claiming reserved water rights within the state.

20 (2) From the time of filing the petition required in
21 [section 16] until July 1, 1982, and while negotiations for
22 the conclusion of a compact under this section are being
23 pursued, all actions to generally adjudicate reserved Indian
24 water rights from a source of water in question under [this
25 act] are suspended, unless an action is commenced or is

1 pending by or on behalf of an Indian tribe to adjudicate
2 water from that source other than as provided for in Title
3 85, chapter 2. In such case, the suspension is maintained
4 only if the action is dismissed or if the parties to the
5 action stipulate to the suspension during compact
6 negotiations of all further proceedings in the action except
7 the determination of jurisdictional issues and an order is
8 so issued.

9 (3) The compact commission may negotiate with the
10 Indian tribes or their authorized representatives jointly or
11 severally to conclude compacts authorized under subsection
12 (1). Compact proceedings shall be commenced by the
13 commission. The commission shall serve by certified mail
14 directed to the governing body of each tribe a written
15 request for the initiation of negotiations under [this act]
16 and a request for the designation of an authorized
17 representative of the tribe to conduct compact negotiations.
18 Upon receipt of such written designation from the governing
19 body of a tribe, compact negotiations shall be considered to
20 have commenced. When the compact commission and the Indian
21 tribes or their authorized representatives have agreed to a
22 compact, they shall sign a copy and file an original copy
23 with the department of state of the United States of America
24 and copies with the secretary of state of Montana and with
25 the governing body for the tribe involved. The compact is

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PAGES 29-32 WERE INADVERTENTLY LEFT OUT OF THIS
VERSION OF **SB 76**. THEY ARE ALSO MISSING FROM
THE ARCHIVES COPY AT THE HISTORICAL SOCIETY.

1 ~~interruptionx-for-the-longest-period-of-timex~~

2 ~~(12)+(13)+(12)~~ "Waste" means the unreasonable loss of
3 water through the design or negligent operation of an
4 appropriation or water distribution facility or the
5 application of water to anything but a beneficial use.

6 ~~(13)+(14)+(13)~~ "Water" means all water of the state,
7 surface and subsurface, regardless of its character or
8 manner of occurrence, including geothermal water and diffuse
9 surface water.

10 ~~(15)+(14)~~ "Water division" means a drainage basin as
11 defined in [section 2].

12 ~~(16)+(15)~~ "Water judge" means a judge as provided for in
13 [sections 1 through 10].

14 ~~(17)+(16)~~ "Water master" means a master as provided for
15 in [sections 1 through 10].

16 ~~(18)+(18)+(17)~~ "Well" means any artificial opening or
17 excavation in the ground, however made, by which groundwater
18 is sought or can be obtained or through which it flows under
19 natural pressures or is artificially withdrawn."

20 Section 30. Section 85-2-112, MCA, is amended to read:

21 "85-2-112. Department duties. The department shall:

22 (1) enforce and administer this chapter and rules
23 adopted by the board under 85-2-113;

24 (2) prescribe procedures, forms, and requirements for
25 applications, permits, certificates, declarations, claims of

1 existing rights, and proceedings under this chapter and
2 prescribe the information to be contained in any
3 application, declaration, claim of existing rights, or other
4 document to be filed with the department under this chapter
5 not inconsistent with the requirements of this chapter;

6 (3) establish and keep in its Helena office a
7 centralized record system of all existing rights and a
8 public record of permits, certificates, declarations, claims
9 of existing rights, applications, and other documents filed
10 in its office under this chapter;

11 (4) cooperate with, assist, advise, and coordinate
12 plans and activities with the federal, state, and local
13 agencies in matters relating to this chapter;

14 (5) upon request by any person, cooperate with,
15 assist, and advise that person in matters pertaining to
16 measuring water or filing declarations with the department
17 or claims of existing rights with a district court under
18 this chapter."

19 Section 31. Section 85-2-113, MCA, is amended to read:

20 "85-2-113. Board powers and duties. (1) The board may
21 prescribe fees or service charges for any public service
22 rendered by the department under this chapter, including
23 fees for the filing of applications or for the issuance of
24 permits and certificates. There shall be no fees for the
25 filing of declarations or for any action taken by the

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department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 32. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference.

(2) The department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference."

Section 33. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, shall be determined as provided in ~~85-2-201 through 85-2-210~~ part 2 of this chapter."

Section 34. Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon

a source of water in which existing rights have not been determined according to ~~85-2-201 through 85-2-210~~ part 2 of this chapter, any party to the controversy may petition the district court for relief. ~~The department shall be served with process in any proceeding under this subsection and shall, within a reasonable time thereafter, notify the court whether it intends in its discretion, within a reasonable time, to begin proceedings to determine existing rights in the source in accordance with part 2 of this chapter. The department may, if it declines to commence proceedings to determine existing rights in the source, intervene as a party in the proceeding.~~ The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the department's decision ~~whether to determine existing rights in the source or the department's decision to intervene as a party as the case may be, if the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties~~ issuance of the final decree.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under ~~85-2-201 through 85-2-210~~ part 2 of this chapter shall be settled by the district court which

1 issued the final decree. The order of the district court
 2 settling the controversy may not alter the existing rights
 3 and priorities established in the final decree. In cases
 4 involving permits issued by the department, the court may
 5 not amend the respective rights established in the permits
 6 or alter any terms of the permits unless the permits are
 7 inconsistent or interfere with rights and priorities
 8 established in the final decree. The order settling the
 9 controversy shall be appended to the final decree, and a
 10 copy shall be filed with the department. The department
 11 shall be served with process in any proceeding under this
 12 subsection, and the department may, in its discretion,
 13 intervene in the proceeding."

14 Section 35. Codification. (1) Sections 1 through 10 of
 15 this act are intended to be codified as an integral part of
 16 Title 3, and the provisions contained in Title 3 apply to
 17 this act.

18 (2) Sections 11 through 27 are intended to be codified
 19 as an integral part of Title 85, chapter 2, part 2, and the
 20 provisions contained in Title 85, chapter 2, apply to this
 21 act.

22 (3) If the provisions of this act are not codified as
 23 stated above, the code commissioner shall add to the MCA, if
 24 necessary, statutory language to convey the intent of this
 25 section.

1 Section 36. Severability. If a part of this act is
 2 invalid, all valid parts that are severable from the invalid
 3 part remain in effect. If a part of this act is invalid in
 4 one or more of its applications, the part remains in effect
 5 in all valid applications that are severable from the
 6 invalid applications.

7 Section 37. Repealer. Sections 85-2-201 through
 8 85-2-210, MCA, are repealed.

9 Section 38. Effective date. This act is effective on
 10 passage and approval.

-End-